

**ORIGINAL****FILED**

SEP 29 2005

U.S. COURT OF  
FEDERAL CLAIMSNo. 03-445C  
(Judge Firestone)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

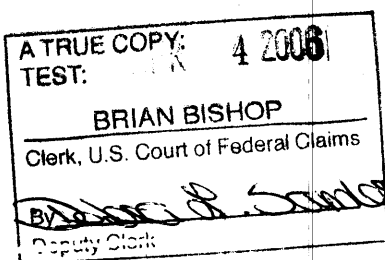
TEXAS PEANUT FARMERS, *et. al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

**PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION  
FOR TRANSFER OF THIS CASE TO THE JUDICIAL PANEL ON MULTIDISTRICT  
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September 28, 2005

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## IN THE UNITED STATES COURT OF FEDERAL CLAIMS

TEXAS PEANUT FARMERS, <i>et al.</i>	)	
Plaintiffs,	)	
	)	
vs.	)	No. 03-445C
	)	(Judge Firestone)
THE UNITED STATES, <i>et al</i>	)	
	)	
Defendant.	)	

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**PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTION TO PLAINTIFFS'**  
**MOTION FOR TRANSFER OF THIS CASE TO THE JUDICIAL PANEL**  
**ON MULTIDISTRICT LITIGATION**

NOW COME Plaintiffs'/Class Counsel and hereby file its Reply to Defendants' Objection to Plaintiffs' Motion to Notify the Judicial Panel on Multi-District Litigation (JPML) that this case may be a "tag-along action." Defendants apparently oppose Plaintiffs' request to notify the JPML but also state that "if however this Court determines that it would be an appropriate courtesy for this Court to inform the JPML of the status of these cases, we would have no objection to such notice." (See Government's brief at pg. 12.) The Government Defendants also make certain concessions that may mean the only difference in the parties' positions are whether to go through a multi-step process (proposed by the Government) which may or may not cut out certain named plaintiffs and potential class members from recovering damages or a shorter and more efficient process (proposed by Class Counsel) that should result in all the plaintiffs and potential class members being before Judge Howard in the Eastern District of North Carolina sooner rather than later. (See *Exhibit 12 comparing the two proposed processes.*)

Simultaneous with the filing of this motion, Class Counsel are filing a Notice and Motion with the Judicial Panel On Multi-District Litigation requesting the same relief; that is, pursuant

to Rule 7.4(a) and 7.5(d) of the General Rules for Multidistrict Litigation under 28 U.S.C. § 1407, that the Clerk of the Panel enter a Conditional Order transferring the action entitled "Texas Peanut Farmers; Billy M. Barnes, et al v. Ross J. Davidson, et al, Federal Court of Claims No. 03-445" to the transferee district, Eastern District of North Carolina; or alternatively that they issue as many as 14 separate orders transferring the cases to the transferee district if this Court and the Court of Federal Claims determines that the extra steps proposed by the Government are required.

In support of this request to issue one conditional transfer order directly to the Eastern District of North Carolina rather than as many as 14 separate transfer orders, Class Counsel submit that this Court can confirm to the JPML that this case may be a "tag-along action" and request that the JPML issue a conditional transfer order to the EDNC. Such an order is valid and enforceable; is in the interests of judicial efficiency and economy; and will avoid continued delays in the conclusion of these class action cases.

### **STATEMENT OF THE CASE AND FACTS**

#### **A. Status of Transferee District Court Case (EDNC)**

Plaintiffs filed the initial class action lawsuit on behalf of North Carolina, Virginia, and South Carolina Peanut Farmers regarding the Government's breach of the 2002 Multiple Peril Crop Insurance Policy (MPCI Policy) in November 2002. The Docketing Statement which contains the various motions and rulings mentioned below is attached hereto as *Exhibit 1, Docket Sheet, EDNC*.<sup>1</sup>

<sup>1</sup> In the Government's brief Counsel for defendants alleged that Plaintiffs'/Class Counsel made an "incomplete and misleading" summary during the telephone conference. However, when challenged on the matter, Government's counsel said that they merely wanted a "more complete summary of the status of all the related cases, than you presented during the status conference." Out of an abundance of caution and based on the original allegations made by Government's counsel, Plaintiffs are providing the docketing statements and a more thorough recitation of the status of the cases than may actually be needed for purposes of the Transfer issue.

The Honorable Malcolm Howard (EDNC) ruled in favor of North Carolina Plaintiff Peanut Farmers and against Defendants on cross-motions for summary judgment. The Court also ruled in favor of North Carolina Plaintiff Peanut Farmers (over the objection of the Government Defendants) on their request for class certification. The Order on these issues was entered on July 22, 2004. (*Exhibit 1.*) No appeal was taken. On July 29, 2004, Plaintiffs filed a motion and memorandum requesting that instead of dismissing certain Plaintiffs from the case that the Court "Transfer Virginia Plaintiffs or Other Plaintiffs to the Appropriate Venues." The Court recently denied that motion. (*Exhibit 1.*)<sup>2</sup>

Judge Howard (EDNC) issued an order on calculation of damages based on cross motions filed by the parties on March 31, 2005. This order on calculation of damages covered the first filed case in the Eastern District of North Carolina as well as the transferee cases. (*Exhibit 2, Docket Sheet For All Cases Sent to Transferee District.*) A Motion for Certification of a National Class Action (and Incorporated Memorandum of Law) was filed originally on February 17, 2005. An Amended Memorandum was filed on March 4, 2005. (*Exhibit 2.*) The Government opposes this motion. Judge Howard has not ruled.

#### **B. Status of Court of Federal Claims Case**

A similar class-action lawsuit was filed in the Court of Federal Claims on behalf of Alabama, Florida, Georgia, South Carolina and Texas farmers on February 25, 2003. As stated in their previously filed pleadings, Class Counsel were attempting to have all cases heard in the same forum.

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<sup>2</sup> Class Counsel are filing a notice of appeal of that ruling and requesting that MDNC plaintiffs and MDVA plaintiffs should not have been dismissed under 28 U.S.C. § 1631 which is consistent with the Federal Circuit Court of Appeals ruling in this case. Class Counsel also are filing new "prophylactic" lawsuits in the MDNC and MDVA districts.

On May 31, 2005, the Federal Circuit Court of Appeals reversed the Court of Federal Claims' dismissal of the Court of Federal Claims 2002 peanut insurance case ruling that although jurisdiction lies in the federal district courts, the Court of Federal Claims should have transferred the cases to the appropriate federal district courts. That ruling was not appealed.

Notice for a telephone conference regarding the status of the case was scheduled by this Court for September 9, 2005. Although the notice did not state the purpose of the September 9, 2005 telephone conference, counsel for plaintiffs correctly anticipated the discussion to be about the appropriate method to transfer the Court of Federal Claims case. In preparation for a telephone conference, undersigned counsel sent copies of the Judicial Panel on Multidistrict Litigation (JPML) rules on "tag along cases" to opposing counsel and the Court. Opposing counsel did not send any documents to the court and never contacted class counsel prior to the telephone hearing to discuss its position. In its September 9, 2005 Scheduling Order, this Court treated the Plaintiffs' submission as a motion to notify the JPML that the case may be a "Tag-Along" action to the action now centralized in the Eastern District of North Carolina.

### **C. Status of Transferor District Court Cases.**

Because of delays caused by the Government in the Court of Federal Claims case and elsewhere, Class counsel decided identical "prophylactic" lawsuits should be filed in six federal district courts in six states (including Virginia) in May, 2003. After additional repeated delays, Class Counsel filed a request with the Judicial Panel on Multi District Litigation (JPML) that the six federal district court cases be transferred to the Eastern District of North Carolina for consolidated proceedings pursuant to 28 U.S.C. § 1407. The Government opposed the request.

On July 1, 2004, Class Counsel filed a Notice of Partial Withdrawal of Court of Federal Claims case No. 03-445C in Plaintiff's Motion to Transfer Cases pursuant to 28 U.S.C. § 1407.



As stated in that Notice, Plaintiffs had appealed the ruling of the Court of Federal Claims to preserve the venue or jurisdictional issue. However, in light of a conversation with the Clerk of the Judicial Panel on Multidistrict Litigation, the Plaintiffs filed a Notice of Partial Withdrawal of the Court of Federal Claims case (pending the appeal.) (*Exhibit 3, Footnote 1 of Transfer Order.*)

Pursuant to the federal rules on multi-district litigation, (and over the objection of the Government Defendants,) the JPML transferred for all pretrial proceedings the six federal district court cases to the Eastern District of North Carolina on October 26, 2004. (*Exhibit 2.*) In its Transfer Order, the JPML acknowledged that the Court of Federal Claims case had been withdrawn in recognition of the fact that it was on appeal. A seventh "tag-along" case (from Alabama) also was acknowledged by the JPML in the Transfer Order and was sent to the EDNC several months later (for a total of eight cases before Judge Howard (EDNC)) for all pretrial proceedings. (*Exhibit 2.*) Judge Howard (EDNC), who was assigned the transferee cases, ruled in favor of Plaintiffs in the seven other federal district court cases that had been transferred and against the same Defendants on cross-motions for summary judgment. Judge Howard (EDNC) also ruled in favor of Plaintiffs (again over the objection of the Government Defendants) in each of the separate federal district court cases on their request for class certification pursuant to Fed. R. Civ. P. 23. The Order on these issues was entered on March 31, 2005. (*Exhibit 2*) No appeal was taken.

As mentioned above, Judge Howard (EDNC) issued an order on calculation of damages based on cross motions filed by the parties on March 31, 2005. This order on calculation of damages covered the first filed case in the Eastern District of North Carolina as well as the transferee cases. (*Exhibit 2, Docket Sheet for All Cases Transferee District*) A "Motion for

Certification of a National Class Action (And Incorporated Memorandum of Law) was filed originally on February 17, 2005. An Amended Memorandum was filed on March 4, 2005. (*Exhibit 2.*) The Government opposes this motion. Judge Howard has not ruled.

**D. Class Counsel's Efforts to Obtain Information Regarding Other Named Plaintiffs' and Potential Class Members and Government's Refusal to Provide Information on Named Plaintiffs and Other Class Members**

The Government's efforts to limit the recovery of potential claimants was announced at the outset of the case. In a letter of August 15, 2003, Counsel for the Government Defendants wrote:

We also wish to make clear that, even though one or more of the plaintiffs may be named in the appropriate district court, the Government reserves the right to assert other defenses (which may or may not be jurisdictional in nature), and if we prevail, these defenses would result in a dismissal of that plaintiff's action. These potential defenses include: statute of limitations and/or other time-bars, and/or failure to exhaust administrative remedies.

*(Exhibit 4, Vanneman letter of August 15, 2003)*

Thereafter, Class Counsel began its efforts to determine the appropriate venue or jurisdiction for the Plaintiffs (clients of the law firm.) At every turn, the Government has resisted those efforts.

For example, on November 5, 2004, Class Counsel attempted to obtain the necessary information regarding named plaintiffs and potential class members who were not in the Government's database of information by requesting that the Government provide information:

...please advise whether the Government is willing to furnish names of all potential class members in other states. We received the Court's Order regarding notice to the class members. We compared the list the Government provided with our internal list of clients [plaintiffs] and found that there were almost 100 clients [plaintiffs] who were not considered class members according to the Government's document that you submitted. It would be helpful if the



Government can go ahead and voluntarily furnish the names of all potential class members in each of the states so we can be working on similar information.

(*Exhibit 5, Boyce letter to AUSA Goulian, November 5, 2005.*) The information was never provided.

On December 2004, The Government filed its responses to discovery requests and again refused to provide information regarding named plaintiffs and other potential class members in the various states in which actions were pending. (*Exhibit 6, Defendants' Response to Plaintiffs' First Set of Interrogatories.*)

On February 17, 2005, Class Counsel filed a motion to compel the production of documents regarding the identification of plaintiffs and potential class members in the seven districts in which cases had been filed as well as other districts in other states where no actions had been filed. (*Exhibit 7, Motion for Discovery Order Compelling Production of Documents.*)

**The Government opposes providing the information.**

On July 14, 2005, Class Counsel again wrote the Government handling the consolidated cases when it was determined that class notice (using the information provided by the Government) had not included all Plaintiff peanut farmers represented by class counsel. (*Exhibit 8, Boyce letter of July 14, 2005.*) In fact, as many as 56 Texas peanut farmers, four Florida peanut farmers, 1 South Carolina plaintiff, 42 Virginia plaintiffs, 10 Alabama plaintiffs, and 47 Georgia plaintiffs were not included in the Government's list. Almost two months went by before the Government responded to the request. In their September 6, 2005 response, the government merely stated those plaintiffs did not have farms located in one of the seven federal districts (or did not have a loss) and as such refused to provide any additional information. (*Exhibit 9, AUSA Goulian letter to Boyce dated September 6, 2005.*)

The Government steadfastly has refused to provide any assistance or information to help identify the appropriate venues or jurisdictions on named plaintiffs or potential class members while the Government contends they did not farm in a district in which there is an action pending. In fact in their pleadings, they insist that it is up to Plaintiffs'/Class counsel to find the correct jurisdiction or venue for each named plaintiff even though they have conceded (by providing some of the information for certain districts) that they have the information in their possession that could help in this process. Due in part to the Government's refusal to cooperate; the well-founded belief that certain farmers and corresponding class members might be excluded from recovery because of the Government's action; and the fact that the Federal Rules of Civil Procedure require that all potential class members (and plaintiffs) be treated similarly, Class Counsel have filed for national class action certification.

#### ARGUMENT

The Transfer Order of October 26, 2004 describes the seven actions listed in Schedule A regarding the breach of contract of the Multiple Peril Crop Insurance policy for the year 2002. Eight cases presently are consolidated before Judge Howard (EDNC). In the Transfer Order, the Honorable Judge Hodges of the JPML ordered that, "pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of North Carolina are transferred to the Eastern District of North Carolina ...for coordinated or consolidated pretrial proceedings...." The cases still are before that Court for coordinated or consolidated pretrial proceedings which would include the determination of various jurisdictional and venue issues.

Title 28 U.S.C. § 1407 provides:

- (a) when civil actions involving one or more common questions of fact are pending in different districts, said actions may be transferred to any district for coordinated or consolidated pretrial proceedings . Such transfer shall be made by the Judicial Panel on Multidistrict Litigation authorized by this section upon its determination that transfers of

such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the Panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated." (emphasis added)

Rule 7.5 Miscellaneous Provisions Concerning "Tag-Along Actions" provides: (d) "a civil action apparently involving common questions of fact with actions under consideration by the Panel for the transfer under § 1407, which was either not included in a motion under Rule 7.2 of these Rules, or was included in such a motion that was filed too late to be included in the initial hearing section, will ordinarily be treated by the Panel as a potential "tag-along action."

Rule 1.1 of the General Rules/Rules for Multidistrict Litigation under 28 U.S.C. § 1407 provide that "a 'tag-along action' refers to a civil action pending in a district court and involving common questions of fact with actions previously transferred under § 1407." The Court of Federal Claims case has the identical facts and legal issues to the other eight cases but with potentially different plaintiffs and potential class members.

Rule 7.4, Conditional Transfer Orders for "Tag-Along Actions" provides that

(a) "upon learning of the pendency of a potential tag-along action", as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing session(s) and for the reasons expressed in previous opinions and orders of the Panel in the litigation." Moreover, Rule 7.4(c) provides that "any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the 15-day period. If a Notice of Opposition is received by the Clerk of the Panel within this 15-day period, the Clerk of Panel shall not transmit said Order to the Clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule."

Also in Title 28 are three additional statutes that speak to jurisdictional and venue issues.

Title 28 U.S.C. § 1631 provides for a transfer to cure want of jurisdiction:

"Whenever a civil action is filed in a court as defined in § 610 of this Title [28 U.S.C. § 610] or an appeal, including a petition for review of administrative

action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.” (Emphasis added).

Most importantly 28 U.S.C. § 610 defines the word "courts" to include the district courts of the United States as well as **the United States Court of Federal Claims**". Thus for transfers to cure want of jurisdiction, Section 610 treats the U.S. Court of Federal Claims the same as a federal district court.

The treatment of the Court of Federal Claims as a federal district court is found in other federal statutes and rules. The Federal Court of Claims has concurrent jurisdiction with federal district courts over certain actions falling under “the Tucker Act 28 U.S.C. § 1491(a)(1) and the “Little Tucker Act (28 U.S.C. § 1346). Also, the Federal Circuit Court of Appeals treats the U.S. Court of Federal Claims the same as district courts. Rule 1(a) states: “The term ‘district court and trial court’ include: (a) the United States district courts; [and] (c) the United States Court of Federal Claims.... (emphasis added)

Title 28 U.S.C. § 1406 provides for the cure or waiver of defects: “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Moreover, 28 U.S.C. § 1404 provides for change of venue: “(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.”

The above statutes all reference transfers to the appropriate federal district courts or division. The statutes refer to “the interests of justice” and speak of convenience of the parties



and judicial efficiency. Moreover, Rule 23 which governs class actions, has as part of its purpose, not only treating all class members similarly but also judicial efficiency and economy.

Based on prior statements made by the Government in these proceedings, Plaintiff's Counsel are concerned that the Government's efforts are to preclude some plaintiff peanut farmers and potential class members who otherwise would be entitled to recover like other class members may recover. Under the Government's proposal, they are only willing to transfer to the Eastern District of North Carolina such cases of plaintiffs who farm in the districts whose cases already are pending in the Eastern District of North Carolina. Then they reserve the right to seek dismissal of the transferred cases. The Government has admitted that numerous Plaintiffs are not listed in the database they provided for class notice. Upon information and belief, if the Government is to have its way, 42 plaintiffs in Virginia could be left out; two plaintiffs in North Carolina could be left out; 47 plaintiffs could be left out in Georgia; 4 plaintiffs could be left out in Florida; 10 plaintiffs could be left out in Alabama, and as many as 33 plaintiffs could be left out of the Texas case. (*Exhibits 8 and 9.*) Moreover, many more would be left out since the cases have been certified as class actions. Such a result would fly in the face of Rule 23 of the Rules of Civil Procedure which govern class actions. Potential class members are to be treated similarly, not excluded or precluded from recovery.

In Simanonok v. Simanonok, 918 F.2d 947 (1990), the court dealt with the question of whether the district court lacked jurisdiction over the United States claims. The court stated that it was cognizant of the Supreme Court's admonition that they are obliged to "adhere strictly to principles of law of the case" in order to avoid a "perpetual game of jurisdictional ping pong" citing Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 818-19, 108 S. Ct. 2166, 100 L.Ed.2d 811 (1988). The Court in Simanonok noted that the whole jurisdictional dispute had

been orchestrated by the Government, which had made and refrained from making arguments as the mood struck. The Court noted that on appeal to the Eleventh Circuit, the Government argued that the district court indeed had Little Tucker Act jurisdiction, and so the appeal should lie there. In support of its motion to transfer, the Government cited the district court's order finding Little Tucker Act jurisdiction. The Eleventh Circuit accepted the argument and transferred the case back to the United States Court of Appeals for the Federal Circuit. Once there, however, the Government doubled back and argued again that there was no Little Tucker Act jurisdiction in district court. The Court noted that under those circumstances, there was little wonder that the jurisdictional status of the case had been unsettled. Accordingly, the Federal Circuit retransferred back to the United States Court of Appeals for the Eleventh Circuit.

In a letter dated July 30, 2003, before the Court of Federal Claims and the subsequent appeal to the Federal Circuit Court of Appeals, Class Counsel sent a letter to counsel for the Government Defendants in which Class Counsel stated:

"We agree with Judge Firestone that it would be best for the courts and all concerned to have these cases heard all in one case. Also, as Judge Firestone said, "the Plaintiffs need something in hand to assure our clients that this case will not be switched back and forth from jurisdiction to jurisdiction and thereby avoid an expeditious decision on the merits of the case in the ultimate issue of liability."

*(Exhibit 10.)*

The Government's Attorney now opposing this consolidation in earlier words to the Federal Circuit Court of Appeals seemed to agree with Judge Firestone and the theory of consolidation to resolve pretrial issues in one place when she stated:

"Appellants contend that, for each named plaintiff, the counties with respect to the farms at issue were identified in the complaint. However, there are dozens of counties potentially involved, and fourteen possible districts within the five state (four districts in Texas; three districts each in Florida, Georgia, and Alabama and one district in South Carolina, for a total of fourteen possible districts) . . . .



Thus, it was not practical for the court [Court of Federal Claims] to attempt to issue transfer orders to any one of the multiple district courts...

*(Exhibit 11, Brief filed by Attorney Vanneman with the Federal Circuit Court of Appeals, July 21, 2004.)* Even earlier, this same Government Attorney was suggesting consolidation and resolution of jurisdictional issues:

I believe that the most prudent course would be first to clarify and correct these jurisdictional and other matters before proceeding in any of the district courts on the merits or any other matters.

*(Exhibit 3, Letter from Attorney Jane Vanneman dated August 15, 2003, pg. "7".)*

Class counsel submit that the Government's own prior statements show how much more practical it would be for the Court of Federal Claims and the JPML to issue one transfer order rather than transferring the Court of Federal Claims case to fourteen separate federal district courts which will then be sent to the JPML for consideration of 14 different tag along orders and end in the same place (EDNC) for consolidated pretrial proceedings. After all pretrial proceedings, the original seven cases and as many as 14 new cases will be sent back to the appropriate federal district courts.

Counsel for the Government concede in their brief that based on the Federal Circuit Court of Appeals ruling that "the dismissal order of the Court of Federal Claims dismissing the case as vacated and the case is remanded with instructions to transfer" must be followed. Moreover, the mandate of the procedure of the Judicial Panel on Multidistrict Litigation make the transfer of "tag-along actions" automatic and mandatory unless the party opposing the transfer files a notice of opposition with the Clerk of the JPML Panel within the 15-day period.

The Government Defendants have not cited a single case in which the JPML is prohibited from sending this case to the Eastern District of North Carolina for consolidated and coordinated

pretrial proceedings before returning the cases back to the appropriate federal district courts.<sup>3</sup> Class Counsel are unaware of any case that prohibits the case being designated as a “tag-along action” and being transferred to the EDNC for determination of all pretrial issues including venue and jurisdictional issues under 28 U.S.C. § 1631; 28 U.S.C. § 1406; 28 U.S.C. § 1407, and 28 U.S.C. § 1404 before sending them to the appropriate federal district courts for final judgment. In fact, in August 2003, counsel for the Government even suggested as much: “I believe that the most prudent course would be first to clarify and correct these jurisdictional and other matters before proceeding in any of the district courts on the merits or any other matters. (*Exhibit 4, Letter of Attorney Vanneman, August 15, 2003.*) As stated in previous cases, it is unfair for parties to play “jurisdictional ping-pong” in order to gain some strategic advantage or delay.

Plaintiffs initially proposed the simple most efficient transfer of cases, that is that this Court notify the JPML and that the JPML issue an order pursuant to JPML Rule 7.4 directing that this case be designated a “tag along” case and join all the other identical cases for coordinated or consolidated pretrial proceedings in the EDNC as allowed by 28 U.S.C. § 1407.

Once the EDNC has ruled on all pretrial proceedings, including transfer of specific plaintiffs’

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- <sup>3</sup> The Government also attempts to convince the courts that matters of sovereign immunity are involved. (See Government’s brief at pg. 3.) What the Government fails to point out is that in his Summary Judgment Order, Judge Howard indicated the “the congressional act reducing crop insurance coverage on peanuts for the 2002 crop year was not a “public and general” act; therefore the sovereign acts doctrines does not allow the government to escape its contractual obligations under the 2002 crop insurance policies. Furthermore, because the governmental act was not “public and general,” the unmistakability doctrine does not apply....” Howard Order of July 22, 2004, pg 46). Moreover, the contract and the Code of Federal Regulations specifically waives sovereign immunity for the insurance contract:
  - **25 Legal Action Against Us.** You may not bring legal action against us unless you have complied with all of the policy provisions
  - If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

claims to other federal district courts to cure any jurisdictional or venue issues, all the cases can be transferred at the conclusion of the multidistrict litigation process. This simple 5 step process as opposed to the inefficient and time-consuming Government proposal is set forth in *Exhibit 12* attached hereto.

Government defendants concede that the "direct transfer of certain plaintiffs' claims may be both efficient and appropriate for this Court to transfer their claims directly to the Eastern District of North Carolina." (Defendants' Response Memorandum, pg. 7); and yet the government opposes this simple process for other Plaintiff Peanut Farmers. Instead, the Government Defendants have proposed a far more laborious, inefficient, and time-consuming process which they concede in their brief "may seem complicated" and that these set of cases are "very complicated procedurally" (*Defendants' Response Memorandum, pg. 2 and pg. 9.*) The process proposed by the Government will actually require much more work for this Court and the Court of Federal Claims' Clerk's Office; the courts and clerks' offices in as many as 14 separate federal districts and the Eastern District of North Carolina Court and its clerk's office.

(See *Exhibit 12* which outlines the numerous steps required by the Government's proposal).

However, Class Counsel are prepared to follow whatever orderly process this Court and the JPML direct.

The proposals are dramatically different from an efficiency point of view, but they may end up with the same result if the Government does not attempt to preclude named Plaintiffs and similarly situated class members from recovery. The Government's proposal on transfer will result in extra work over the next few months for this Court and the Court of Federal Claims' clerk's office and the courts and clerks' offices of as many as 14 different federal districts courts. After this Court resolves all issues relating to which cases may go to which federal district court,

as many as 14 federal district courts will then have to accept and process cases; and then send notices to the JPML. The JPML will then have to review 14 separate filings and determine whether they are "tag-along actions". After Judge Howard resolves all coordinated or consolidated pretrial issues, he will then transfer the original seven federal district court cases plus as many as 14 new federal district court cases for final disposition, final judgment and as many as 21 total class administrations.

Of course, this whole matter could be resolved if the Government had cooperated by providing the information requested; had stipulated to National Class Certification; or had agreed to proceeding in one case for the remainder of the cases including class administration. But it appears the Government will not stipulate to such judicial efficiency and economy.

On the other hand Class Counsel's proposal is simple and efficient and gets to the same end result. Plaintiffs' request involves asking the JPML to designate this case as a "tag-along action" and the JPML thereafter transferring the case to the EDNC. Judge Howard could resolve all pretrial issues including questions of jurisdiction and venue under 28 U.S.C. § 1631; 28 U.S.C. § 1406; 28 U.S.C. § 1407; and 28 U.S.C. § 1404.

If the JPML refuses to rule that the Court of Federal Claims is a "tag-along action," then the Courts would then follow the tedious and time consuming process proposed by the Government. (*Exhibit 12*) Then at the end of this tedious process, the final steps would be the same: JPML can transfer 14 separate cases (instead of one) to the EDNC. Judge Howard could resolve all pretrial issues including questions of jurisdiction and venue under 28 U.S.C. § 1631; 28 U.S.C. § 1406; 28 U.S.C. § 1407; and 28 U.S.C. § 1404 and then again issue transfer orders back to the appropriate federal district courts (if he does not certify it as a national class action. (*Exhibit 12*)



The Government also states in its brief that “if this court determines that it would be an appropriate courtesy for this Court to inform the JPML of the status of those cases, we would have no objection to such notice (Defendants’ Response Memorandum at pg. 12.) Based on that representation, undersigned counsel checked on the JPML Rules and checked with the JPML Clerk’s Office. Class Counsel have determined it is entirely appropriate for Plaintiffs’ counsel to notify the JPML of the potential “tag-along action” in the form of a motion. Specifically, 28 U.S.C. § 1407 Rule 7.5(e) provides “any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential tag along actions in which that party is also named or in which that counsel appears.” Therefore, simultaneous with the filing of this Reply, for purposes of judicial efficiency, Plaintiffs’ Counsel is filing a Motion with the JPML to Transfer this case to the EDNC in that the case can properly be designated a “Tag-Along Action” under federal law and pursuant to the General Rules/Rules for Multidistrict Litigation under 28 U.S.C. § 1407.

A much more efficient method would be for this Court, in conjunction with the JPML, to issue one transfer order to the EDNC for all preliminary pretrial proceedings in the Eastern District of North Carolina before proceeding in any of the district courts on the merits or any other matters. Once all pretrial issues including venue or jurisdiction are resolved the cases can be transferred to 21 (or more) separate federal judicial districts for final judgment and the beginning of 21 (or more) separate class administrations. Class counsel merely propose a more efficient route rather than the Government’s proposed long circuitous route which will then end up at the same point. (See *Exhibit 12, Plaintiffs proposed steps 4 and 5 vs. Government’s proposed steps 11 and 12.*)

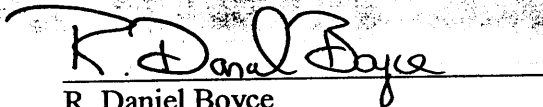
**CONCLUSION**

WHEREFORE, Class Counsel respectfully requests that this Court notify the JPML and that the Judicial Panel on Multidistrict Litigation rule that the Court of Federal Claims is a "tag-along action" and the Clerk of the JPML issue a conditional transfer order transferring the action to the previously designated transferee district court (EDNC) on the basis of the prior hearing session and the reasons expressed in the previous Order of the Panel filed October 26, 2004.

If, however, this Court and the JPML determine that the longer process proposed by the Government must be followed, Plaintiffs'/Class counsel request that the Court also ORDER the Government to provide the necessary information to Plaintiffs' Class Counsel to determine the appropriate federal district courts for each of the named plaintiffs so that cases can be transferred to each of the appropriate federal district courts.

This the 28th day of September, 2005.

**BOYCE & ISLEY, PLLC**



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*Attorney for Plaintiffs*




**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on September 28, 2005, I caused to be served by United States mail, postage prepaid, copies of the foregoing Plaintiffs' Reply to Defendants' Objection to Plaintiffs' Motion for Transfer of This Case to the Judicial Panel on Multidistrict Litigation addressed as follows:

JANE W. VANNEMAN  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
Attn: Classification Unit, 8<sup>th</sup> Floor  
1100 L Street, N.W.  
Washington, DC 20530

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*Attorney for Plaintiffs*

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## RACER U.S. District Court Case Search

**Docket Sheet for 4:02-cv-159 USDC North Carolina Eastern District**

DAN

U.S. District Court  
Eastern District of North Carolina (New Bern)

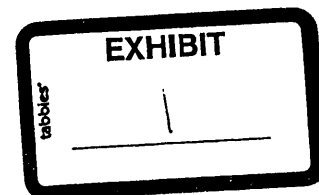
CIVIL DOCKET FOR CASE #: 02-CV-159

Barnhill, et al v. Davidson, et al  
Assigned to: Judge Malcolm J. Howard  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None

Filed: 11/19/02

Nature of Suit: 190  
Jurisdiction: US Defendant

Cause: 05:702 Administrative Procedure Act

MARVIN TAYLOR BARNHILL  
plaintiffPhilip R. Isley  
[COR LD NTC]  
Boyce & Isley  
pisley@boyceisley.com  
P.O. Box 1990  
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919-833-7373  
FTS 833-7536G. Eugene Boyce  
[COR LD NTC]  
Boyce & Isley  
gboyce@boyceisley.com  
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919-833-7373  
FTS 833-7536R. Daniel Boyce  
[COR LD NTC]  
Boyce & Isley, PLLC  
dboyce@boyceisley.com  
P. O. Box 1990  
Raleigh, NC 27602-1990  
919-833-7373  
FTS 833-7536JERRY HAMILL  
plaintiffPhilip R. Isley  
(See above)  
[COR LD NTC]G. Eugene Boyce  
(See above)  
[COR LD NTC]

v.

ROSS J. DAVIDSON, Administrator for Risk Management Agency;  
RISK MANAGEMENT AGENCY; UNITED STATES OF AMERICA; ANN M.  
VENEMAN, Secretary of Agriculture for The United States of  
America; UNITED STATES DEPARTMENT OF AGRICULTURE

defendant

### Proceedings include all events

Date Filed	Doc. No.	Image	Description
11/19/2002	1	<u>Yes: 54 Page(s); 2916 KB; PDF</u>	Complaint filed - Class action on behalf of all peanut farmers in NC and VA who are eligible for the Multiple Peril Crop Insurance Policy for crop year 2002. w/attach. cy. to J. Howard. [Date Entered: 12/02/02, By: js]
11/19/2002	--	No	Filing Fee Paid; FILING FEE \$ 150.00 RECEIPT # 104 9744 [Date Entered: 12/02/02, By: js]
11/19/2002	2	<u>Yes: 13 Page(s); 359 KB; PDF</u>	Motion by Marvin Taylor Barnhill, Jerry Hamill, John Branham, Clark Jenkins, Tom Clements, David mini Grant, Tim Phelps, Tommy Flythe, Jim Ferguson, Glen Hawkins, Billy Bain, Glen Moore, R. L. Smith, H. Steven Allen with memorandum in support for joinder of additional plaintiffs. cy. to J. Howard w/prop. order. [Date Entered: 12/02/02, By: js]
11/20/2002	--	No	Summons(es) issued for Ross Davidson (RMA), Ann Veneman (USDA), Frank Whitney and John Ashcroft. [Date Entered: 12/02/02, By: js]
12/09/2002	3	<u>Yes: 4 Page(s); 94 KB; PDF</u>	Return of service executed as to Frank Whitney 11/21/02 Served by certified mail, return receipt attached. [Date Entered: 12/13/02, By: dh]
12/09/2002	4	<u>Yes: 4 Page(s); 94 KB; PDF</u>	Return of service executed as to Ann M. Veneman 11/25/02 Answer due on 1/25/03 for Ann M. Veneman. Served by certified mail, return receipt attached. [Date Entered: 12/13/02, By: dh]
12/16/2002	5	<u>Yes: 4 Page(s); 91 KB; PDF</u>	Return of service of summons, complaint and motion to join executed as to Ross J. Davidson 11/29/02 by certified mail. Answer due on 1/29/03 for Ross J. Davidson. [Date Entered: 12/17/02, By: ll]
12/16/2002	6	<u>Yes: 5 Page(s); 122 KB; PDF</u>	Return of service of summons, complaint and motion to join executed 11/25/02 as to John Ashcroft by certified mail. [Date Entered: 12/17/02, By: ll]

01/06/2003	7	Yes: 3 Page(s); 117 KB; PDF	Stipulation by Marvin Taylor Barnhill, Jerry Hamill, John Branham, Clark Jenkins, Tom Clements, David mni Grant, Tim Phelps, Tommy Flythe, Jim Ferguson, Glen Hawkins, Billy Bain, Glen Moore, R. L. Smith, H. Steven Allen, Ross J.Davidson, Risk Manage. Agency, USA, Ann M. Veneman, U.S. Dept. of Agric. - as to \$.1775 per pound of insurance coverage for the 2002 Crop Year. Further stipulate that pla. and others similarly situated are entitled to settle any and all insurance claims for the 2002 Crop Year at the rate of \$.1775 per pound without waiving any further claimsto the difference between \$.31 per pound and \$.1775 per pound etc... [Date Entered: 01/09/03, By: dh]
01/09/2003	--	No	Motion(s) submitted: [2-1] motion for joinder of additional plaintiffs submitted. CASE FILE TO JUDGE HOWARD FOR CONSIDERATION. [Date Entered: 01/09/03, By: dh]
01/13/2003	8	Yes: 2 Page(s); 47 KB; PDF	Order - the stipulations as set forth in the Stipulation are accepted as fact. It is hereby ORDERED that plaintiff may settle their claims with their insurance carriers under the Multiple Peril Crop Insurance Policy for the 2002 Crop Year based on \$.1775 per pound without waiving their right to claims additional coverage up to and including \$.31 per pound for any loss under the Multiple Peril Crop Insurance Policy for the 2002 Crop Year. ccys served. signed by Malcolm J. Howard, US Judge. [Date Entered: 01/13/03, By: dh]
01/16/2003	9	Yes: 7 Page(s); 161 KB; PDF	Answer to Complaint by Ross J. Davidson, Risk Manage. Agency, USA, Ann M. Veneman, U.S. Dept. of Agric., cs. NO JURY DEMAND. [Date Entered: 01/22/03, By: dh]
01/22/2003	10	Yes: 1 Page(s); 35 KB; PDF	Order granting [2-1] motion for joinder of additional plaintiffs. **NOTE**400 plaintiffs to be added to case. Clerks will add plaintiffs to case in intervals of fifty until all plaintiffs are added. ccys served. signed byMalcolm H. Howard, US Judge. [Date Entered: 01/22/03, By: dh]
01/22/2003	--	No	Advised by Mr. Boyce's office he will be filing a second motion to join an additional fifty plaintiffs to the case. [Date Entered: 01/22/03, By: dh]
01/22/2003	11	Yes: 17 Page(s); 378 KB; PDF	Motion by Marvin Taylor Barnhill, Jerry Hamill, John Branham, Clark Jenkins, Tom Clements, David mni Grant, Tim Phelps, Tommy Flythe, Jim Ferguson, Glen Hawkins, Billy Bain, Glen Moore, R. L. Smith, H. Steven Allen for joinderof additional parties, cs. [Date Entered: 01/28/03, By: dh]
01/28/2003	--	No	Motion(s) submitted: [11-1] motion for joinder of additional parties submitted. CASE FILE TO JUDGE HOWARD FOR



			CONSIDERATION. [Date Entered: 01/28/03, By: dh]
02/07/2003	12	<u>Yes: 2 Page(s); 38 KB; PDF</u>	Order granting [11-1] second motion for joinder of additional parties signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 02/07/03, By: dh]
06/05/2003	13	<u>Yes: 32 Page(s); 1227 KB; PDF</u>	Memorandum by Marvin Taylor Barnhill and all other plaintiffs, in support of Plaintiff's Motion for Partial Summary Judgment (filed next day on 6/6/03). w/cs. [Date Entered: 06/13/03, By: ll]
06/06/2003	14	<u>Yes: 3 Page(s); 51 KB; PDF</u>	Motion by Marvin Taylor Barnhill and all other plaintiffs for partial summary judgment. w/cs. (*NOTE: Memorandum in Support of this motion previously filed on 6/5/03) [Date Entered: 06/13/03, By: ll]
06/18/2003	15	<u>Yes: 3 Page(s); 71 KB; PDF</u>	Motion by Marvin Taylor Barnhill, and all other plaintiffs, for class certification; appointment of class representatives and designation of class counsel. w/cs. [Date Entered: 06/25/03, By: ll]
06/18/2003	16	<u>Yes: 13 Page(s); 481 KB; PDF</u>	Memorandum by Marvin Taylor Barnhill, and all other plaintiffs, in support of [15-1] motion for class certification; appointment of class representatives and designation of class counsel. w/cs and attachments. [Date Entered: 06/25/03, By: ll]
06/25/2003	17	<u>Yes: 6 Page(s); 177 KB; PDF</u>	Motion by Ross J. Davidson, Risk Manage. Agency, USA, Ann M. Veneman, U.S. Dept. of Agric. to stay responses to motion for partial summary judgment and motion for class certification. w/cs. [Date Entered: 06/27/03, By: ll]
07/03/2003	18	<u>Yes: 10 Page(s); 347 KB; PDF</u>	Response in Opposition by Marvin Taylor Barnhill (and all other plaintiffs) to [17-1] motion to stay responses to motion for partial summary judgment and motion for class certification. w/cs and attachments. [Date Entered: 07/19/03, By: ll]
07/22/2003	19	<u>Yes: 17 Page(s); 588 KB; PDF</u>	Notice of Filing by Ross J. Davidson, Risk Manage. Agency, USA, Ann M. Veneman, U.S. Dept. of Agric. - In Support of Defendants' Motion to Stay, cs. [Date Entered: 07/25/03, By: dh]
07/29/2003	--	No	Case file to David W. Daniel, Clerk/Magistrated Judge Designee for consideration of {#17-1} motion to stay responses to motion for partial summary judgment and motion for class certification. [Date Entered: 07/29/03, By: dh]
			Motion by Marvin Taylor Barnhill, Jerry Hamill, John Branham, Clark Jenkins, Tom Clements, David mni Grant, Tim Phelps, Tommy Flythe, Jim Ferguson, Glen Hawkins,

12/10/2003	20	<u>Yes: 27 Page(s); 1736 KB; PDF</u>	Billy Bain, Glen Moore, R. L. Smith, H. Steven Allen, GP Kittrell & Son, Earley and Taylor, Walter W. Anderson Jr., Paul C. Askew, John K. Askew, David Wayne Aycock, Leon T. Baird, Donald E. Barnes, Bennie C. Barnes, Stanley H. Barnes, Elizabeth Prince Barnes Family, Marvin Taylor Barnhill, Benford L. Barrett, Jerry W. Batten, Michael E. Belch, Milton E. Bennett, Tony R. Bennett, Billy Drewette, Sandra D. Flythe, Estelle Edwards Blanton, Jimmy G. Blythe, Terry C. Boone, Jean J. Boseman, Joel M. Boseman, Wayne Boseman, Mark Boseman, Chris A. Braddy, Timothy R. Braddy, James Arthur Bradley Jr., John W. Branham IV, Clemmon W. Bridgers, Gary B. Bridgers, Sadie V. Bridgers, Keith F. Britt Sr., David W. Britton, Andrew J. Britton, Josiah B. Brown, Thomas E. Brown, Robert T. Brown, Berry Robert Brown, Edward Merrion Brown III, Bobby Joe Browning, Jesse L. Bunch, Lori S. Burgess, Neil B. Burgess, Robert Earl Byrum, Tommy Daniel Byrum Jr., Tommy D. Byrum Sr., James L. Champion, Clark Farms WS, Allen D. Clary, Mike W. Corey, Loumus Council, Charlie Council, Harvey Lee Council, Ben S. Cowin, Bobby E. Crawley, Joy S. Critzer, Jeffrey A. Cumbo, Jack J. Dail Jr., Kelly Mack Davis, Michael A. Davis, Anderson Mack Davis, Joey D. Davis, Hallet S. Davis, Phillip V. Davis, Thomas L. Davis, Grady P. Davis III, Lawrence Dickens, Allen A. Dickens, Aubrey N. Dickens, Edward Lee Dickens, Jacob L. Dickens III, Jacob L. Dickens Jr., Barbara W. Drewett, Conwell S. Duncan, David Dunlow, James R. Earley Sr., Calvin R. Eason, Leonard Wayne Edwards, Patrick B. Edwards, Robert D. Edwards, Rose T. Edwards, Stephen Scott Edwards, Keith Hugh Edwards, Scott Edwards, James S. Eley, Bobby Lee Eubanks, Myrick Farm Partners, Beech Run Farms, Barnes Farms, Futrell Farms, Star Valley Farms, Sumner Farms, Inc., Richard W. Feher, Jim W. Fisher, Bruce Lea Flye, Bryan K. Flythe, M. Thomas Flythe Jr., James Earl Flythe Jr., James Earl Flythe Sr., George K. Francis, William Earl Futrell Jr., Robert P. Gardner Jr., Robert P. Gardner Sr., Raymond P. Garner, RP & EC Garner, Edward C. Garner, Raymond P. Garner Jr., Thomas [Date Entered: 12/17/03, By: dh]
12/10/2003	21	<u>Yes: 15 Page(s); 438 KB; PDF</u>	Motion by plaintiffs with memorandum in support to compel discovery, cs. [Date Entered: 12/17/03, By: dh]
12/22/2003	22	<u>Yes: 13 Page(s); 424 KB; PDF</u>	Second Motion by plaintiffs for entry of judgment or alternatively, Scheduling Order, cs. [Date Entered: 12/24/03, By: dh]
12/29/2003	23	<u>Yes: 3 Page(s); 72 KB; PDF</u>	Response by USA in opposition to [21-1] motion to compel discovery [Date Entered: 01/12/04, By: dh]



12/30/2003	24	Yes: 3 Page(s); 67 KB; PDF	Motion by plaintiffs to amend [1-1] complaint [Date Entered: 01/12/04, By: dh]
12/30/2003	25	Yes: 12 Page(s); 558 KB; PDF	Memorandum in support of [24-1] motion to amend [1-1] complaint to add additional defts. [Date Entered: 01/12/04, By: dh]
01/02/2004	26	Yes: 25 Page(s); 966 KB; PDF	Motion with memorandum in support by defts to dismiss or alternatively for Summary Judgment, cs. w/attachments. [Date Entered: 01/12/04, By: dh]
01/02/2004	27	Yes: 11 Page(s); 419 KB; PDF	Defts. Response in opposition to [15-1] motion for class certification; appointment of class representatives and designation of class counsel [Date Entered: 01/12/04, By: dh]
01/02/2004	28	Yes: 29 Page(s); 1088 KB; PDF	Response in opposition to [22-1] motion for entry of judgment or alternatively, Scheduling Order, [20-1] motion to enter judgment or alternatively schedule a status conference with incorporated Memorandum of Law, [14-1] motion for partial summary judgment, cs. [Date Entered: 01/12/04, By: dh]
01/02/2004	29	Yes: 25 Page(s); 757 KB; PDF	Motion by defts with memorandum in support for protective order, cs. [Date Entered: 01/12/04, By: dh]
01/12/2004	--	No	Motion(s) referred: referred [21-1] motion to compel discovery to USMJ David W. Daniel. COPY OF MOTION AND UPDATED DOCKET SHEET TO JUDGE DANIEL FOR CONSIDERATION. [Date Entered: 01/12/04, By: dh]
01/16/2004	30	Yes: 4 Page(s); 83 KB; PDF	Motion by the plaintiffs to extend time to file responses to governments' pleadings and request for status conference. Counsel for the defendant's does not oppose this motion. [Date Entered: 02/02/04, By: dh]
01/30/2004	31	Yes: 31 Page(s); 1145 KB; PDF	Reply by plaintiffs to response to [15-1] motion for class certification; appointment of class representatives and designation of class counsel, cs. w/attachments. [Date Entered: 02/05/04, By: dh]
01/30/2004	32	Yes: 15 Page(s); 553 KB; PDF	Reply by plaintiffs to response to [20-1] motion to enter judgment or alternatively schedule a status conference with incorporated Memorandum of Law, [14-1] motion for partial summary judgment, cs. w/attachments. [Date Entered: 02/05/04, By: dh]
01/30/2004	33	Yes: 25 Page(s); 963 KB; PDF	Response by plaintiffs to [26-1] motion to dismiss or alternatively for Summary Judgment, cs. w/attachments. [Date Entered: 02/05/04, By: dh]
			Motion(s) referred: referred [30-1] motion to extend time to

02/02/2004	--	No	file responses to governments' pleadings and request for status conference to USMJ David W. Daniel. COPY OF MOTION AND UPDATED DOCKET SHEET TO JUDGE DANIEL FOR CONSIDERATION. [Date Entered: 02/02/04, By: dh]
02/09/2004	34	Yes: 1 Page(s); 23 KB; PDF	Order, set status conference before USMJ David W. Daniel for 3:00 2/12/04 in Room 624, Terry Sanford Fed. Bldg., Raleigh, NC signed by David W. Daniel, USMJ. ccys served. Copy to Beck for deputy clerk. Calendar Copy. Telephoned Counsel. [Date Entered: 02/09/04, By: dh]
02/10/2004	--	No	Received telephone call from Eric Goulian advising he is in California this week and requesting a continuance of the Status Conf. set for Thursday, Feb. 12th before Judge Daniel in Raleigh. Deputy Clerk Heath advised Mr. Goulian he would need to file a Motion to Continue and she would get it to Judge Daniel immediately. [Date Entered: 02/10/04, By: dh]
02/10/2004	35	Yes: 2 Page(s); 46 KB; PDF	Motion by deft. to continue hearing scheduled for 2/12/04 at 3:00 p.m., cs. cy to USMJ Daniel. [Date Entered: 02/13/04, By: dh]
02/13/2004	36	Yes: 1 Page(s); 20 KB; PDF	Order granting [35-1] motion to continue hearing scheduled for 2/12/04 at 3:00 p.m., reset status conference before USMJ David W. Daniel for 9:00 2/19/04, 6th floor courtroom, Raleigh signed by David W. Daniel, USMJ. ccys served. Calendar Copy. Copy to Becky. [Date Entered: 02/13/04, By: dh]
02/17/2004	--	No	Motion(s) referred: referred [30-1] motion to extend time to file responses to governments' pleadings and request for status conference to USMJ David W. Daniel, [29-1] motion for protective order, [24-1] motion to amend [1-1] complaint, [21-1] motion to compel discovery, [20-1] motion to enter judgment or alternatively schedule a status conference with incorporated Memorandum of Law, [17-1] motion to stay responses to motion for partial summary judgment and motion for class certification, [15-1] motion for class certification; appointment of class representatives and designation of class counsel. LAST PART OF CASE FILE TO USMJ DANIEL FOR CONSIDERATION. [Date Entered: 02/17/04, By: dh]
02/17/2004	37	Yes: 10 Page(s); 393 KB; PDF	Reply by defendants to response to [26-1] motion to dismiss or alternatively for Summary Judgment, cs. [Date Entered: 02/23/04, By: dh]
			Motion hearing re: [30-1] motion to extend time to file responses to governments' pleadings and request for status

02/19/2004	--	No	conference, [24-1] motion to amend [1-1] complaint, [17-1] motion to stay responses to motion for partial summary judgment and motion for class certification before USMJ David W. Daniel; Courtroom Deputy - Becky Bowen. Court Reporter - Donna Tomawski. Danny Boyce present for Plaintiffs; Eric Goulian for the government; Judge Daniel grants the following motions from the bench: Motion to Extend Time (#30); Motion to amend complaint (#24); Government's motion to stay is MOOT (#17); the Court will defer ruling on other pending motions to Judge Howard (.5 hr) [Date Entered: 02/19/04, By: bb]
02/23/2004	--	No	Will submit motion to dismiss once file is back from Judge Daniel's Chamber. [Date Entered: 02/23/04, By: dh]
02/26/2004	38	<u>Yes: 3 Page(s); 77 KB; PDF</u>	Motion by plaintiffs to transfer for hearing on preliminary matters, cs. cy to USMJ Daniel. [Date Entered: 03/11/04, By: dh]
02/26/2004	39	<u>Yes: 27 Page(s); 1015 KB; PDF</u>	Document filed by plaintiffs titled: Plaintiffs' Supplemental Memorandum Regarding Summary Judgment Issues, cs. w/attachments. [Date Entered: 03/11/04, By: dh]
03/03/2004	40	<u>Yes: 28 Page(s); 759 KB; PDF</u>	Memorandum by plaintiffs in opposition to [29-1] motion for protective order, cs. [Date Entered: 03/11/04, By: dh]
03/16/2004	41	<u>Yes: 18 Page(s); 622 KB; PDF</u>	Document filed titled: Supplemental Memorandum of Points and Authorities Regarding Defendants' Motion to Dismiss for Failure to Exhaust Administrative Remedies, cs. w/attachment. [Date Entered: 03/18/04, By: dh]
04/02/2004	42	<u>Yes: 2 Page(s); 40 KB; PDF</u>	Certificate of service of Plaintiffs' Memo. in Opposition to Gov't's Motion for Proto w/Supporting Memo. [Date Entered: 04/06/04, By: dh]
04/06/2004	--	No	Will submit motion to dismiss once file comes back from Judge Daniel's chamber. [Date Entered: 04/06/04, By: dh]
05/03/2004	43	<u>Yes: 6 Page(s); 110 KB; PDF</u>	Notice of Filing by the defendant's of Administrative Record, cs. w/attached CD in clear plastic binder. [Date Entered: 05/10/04, By: dh]
05/03/2004	44	<u>Yes: 16 Page(s); 675 KB; PDF</u>	Document filed by the defendants titled: Defendant's Supplemental Memorandum Regarding Summary Judgment and Response To Plaintiffs' Supplemental Memorandum. cs. w/attachments marked volume 1 - 3. (Place in grayexpandable folder) [Date Entered: 05/10/04, By: dh]
			Order - This court hereby schedules a hearing on Thursday, May 20, 2004 at 1:00 p.m. in G'ville. The parties should present arguments on the following: Motion hearing before Judge Malcolm J. Howard set for 1:00 5/20/04 for [26-1]

05/07/2004	45	Yes: 1 Page(s); 26 KB; PDF	motion to dismiss or alternatively for Summary Judgment, set for 1:00 5/20/04 for [15-1] motion for class certification; appointment of class representatives and designation of class counsel, set for 1:00 5/20/04 for [14-1] motion for partial summary judgment signed by Malcolm J. Howard, US Judge. ccys served. Calendar Copy. Copy to Becky for CourtReporter. [Date Entered: 05/07/04, By: dh]	
05/10/2004	--	No	Case submitted to: Judge Howard [45-1] order Motion hearing before Judge Malcolm J. Howard set for 1:00 5/20/04 for [26-1] motion to dismiss or alternatively for Summary Judgment, set for 1:00 5/20/04 for [15-1] motion for class certification; appointment of class representatives and designation of class counsel, set for 1:00 5/20/04 for [14-1] motion for partial summary judgment submitted. CASE FILE TO JUDGE HOWARD FOR CONSIDERATION. [Date Entered: 05/10/04, By: dh]	
05/12/2004	45	Yes: 7 Page(s); 201 KB; PDF	Document filed titled: Defendant's Notice of Filing of Order Denying Discovery In Related Case, cs. cy to Judge Howard. [Date Entered: 05/17/04, By: dh]	
05/17/2004	46	Yes: 1 Page(s); 21 KB; PDF	Order, Motion hearing before Judge Malcolm J. Howard set for 10:00 5/20/04 for [26-1] motion to dismiss or alternatively for Summary Judgment, set for 10:00 5/20/04 for [15-1] motion for class certification; appointment of class representatives and designation of class counsel, set for 10:00 5/20/04 for [14-1] motion for partial summary judgment signed by Malcolm J. Howard, US Judge. ccys served. Calendar Copy. [Date Entered: 05/17/04, By: dh]	
05/20/2004	--	No	Motion hearing held in G'ville before Judge Malcolm J. Howard. Courtroom Deputy - Delsia Heath. Counsel present for plaintiffs - Philip R. Isley, G. Eugene Boyce, R. Daniel Boyce and Bob Sutte, N.C. Peanut Grower's Association. Counsel present for the defendants - Eric Goulian, AUSA. Court calls case. Court notes attys appearances. Opening remarks by counsel. Counsel present arguments. Court will enter written order within two to four weeks. Court does not anticipate any further hearings on the pending motions. Court adjourned at 12:27 p.m. [Date Entered: 05/20/04, By: dh]	
06/02/2004	--	No	Transcript Filed - regarding hearing on May 20, 2004 before Judge Howard Court Reporter - Sharon Kroeger [Date Entered: 06/03/04, By: dh]	
06/30/2004	--	No	Received letter from R. Daniel Boyce dated June 25, 2004 with attached copies of documents that were sent to MDL. Letter placed on left side of file. [Date Entered: 06/30/04, By: dh]	



07/22/2004	47	<u>Yes: 49 Page(s); 1710 KB; PDF</u>	Order granting [26-1] motion to dismiss or alternatively for Summary Judgment, granting [15-1] motion for class certification; appointment of class representatives and designation of class counsel, denying [14-1] motion for partial summary judgment. The court hereby orders that this case shall proceed as a class action and hereby certified the following class: (see order for language). The court hereby appoints the following pla's as class representative: Marvin Taylor Barnhill, Jerry Hamill, John Branham, Clark Jenkins, Tom Clements, David Grant, Tim Phelps, and Tommy Flythe. Philip R. Isley, G. Eugene Boyce, and R. Daniel Boyce shall represent the certified class. For lack of subject matter jurisdiction, the court hereby dismisses all plaintiffs who do not have peanut farms in the EDNC, including Jim Ferguson, Glen Hawkins, Billy Bain, Glen Moore, R.L. Smith, H. Steven Allen, and all pla's listed in Exhibit B to pla's motion to join additional pla's filed Nov. 19, 2002. Class representative shall have 15 days from the date of this order to file a proposed notice for class members. signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 07/22/04, By: dh]
07/29/2004	48	<u>Yes: 5 Page(s); 96 KB; PDF</u>	Motion by plaintiffs to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues. cs [Date Entered: 08/19/04, By: sf]
07/29/2004	49	<u>Yes: 12 Page(s); 395 KB; PDF</u>	Memorandum by plaintiffs in support of [48-1] motion to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues. cs w/attachments. [Date Entered: 08/19/04, By: sf]
08/05/2004	50	<u>Yes: 21 Page(s); 856 KB; PDF</u>	Motion with memorandum in support for reconsideration of [47-1] order cs [Date Entered: 08/19/04, By: sf]
08/16/2004	51	<u>Yes: 6 Page(s); 121 KB; PDF</u>	Motion by plaintiffs to extend time to file response to def't's m/reconsideration, cs. cy to clerk w/p.o. [Date Entered: 08/20/04, By: dh]
08/18/2004	52	<u>Yes: 5 Page(s); 179 KB; PDF</u>	Response to [48-1] motion to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues., cs. [Date Entered: 08/20/04, By: dh]
08/20/2004	--	No	Received Proposed Consent Protective Order. [Date Entered: 08/20/04, By: dh]
08/20/2004	--	No	Original Consent Protective Order to USMJ Daniel for consideration. [Date Entered: 08/20/04, By: dh]
08/20/2004	53	<u>Yes: 3 Page(s); 93 KB; PDF</u>	Consent Protective Order as to certain information re: potential class members. ccys served. signed by David W. Daniel, USMJ. [Date Entered: 08/20/04, By: dh]

08/20/2004	54	<u>Yes: 1 Page(s); 18 KB; PDF</u>	Order granting [51-1] motion to extend time to file response to deft's m/reconsideration, Response to motion reset to 9/7/04 for [50-1] motion for reconsideration of [47-1] order signed by Michael D. Brooks, Acting Clk..ccys served. [Date Entered: 08/20/04, By: dh]
08/20/2004	55	<u>Yes: 15 Page(s); 595 KB; PDF</u>	Document filed by defendants titled: Defendants' Response to Plaintiff's Proposed Class Notice, cs. w/attachments. [Date Entered: 08/25/04, By: dh]
08/30/2004	56	<u>Yes: 3 Page(s); 62 KB; PDF</u>	Reply to response to [48-1] motion to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues., cs. [Date Entered: 09/10/04, By: dh]
09/01/2004	--	No	Case submitted to: Judge Howard per request. [Date Entered: 09/01/04, By: dh]
09/07/2004	57	<u>Yes: 14 Page(s); 492 KB; PDF</u>	Response by pla's to [50-1] motion for reconsideration of [47-1] order-cs- w/attachments [Date Entered: 09/13/04, By: sf]
09/16/2004	58	<u>Yes: 1 Page(s); 31 KB; PDF</u>	Order - The plaintiffs have presented to this court a proposed Notice to Class Member pursuant to Rule 23 of the Fed. R. Civ. P. Accordingly, the Notice to Class Members is hereby approved. Class counsel are hereby Ordered to send the Class Notice to each member of the Class as soon as possible. ccys served 9/16/04. signed by Malcolm J. Howard, US Judge. [Date Entered: 09/17/04, By: dh]
09/17/2004	59	<u>Yes: 5 Page(s); 150 KB; PDF</u>	Reply by Ross J. Davidson, Risk Manage. Agency, USA, Ann M. Veneman, U.S. Dept. of Agric. to response to [50-1] motion for reconsideration of [47-1] order.- cs [Date Entered: 10/01/04, By: sf]
10/01/2004	--	No	Motion(s) submitted: [50-1] motion for reconsideration of [47-1] order submitted. Case file to Judge Howard for consideration. [Date Entered: 10/01/04, By: sf]
10/12/2004	--	No	Motion(s) submitted: [48-1] motion to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues. COPY OF UPDATED DOCKET SHEET TO JUDGE HOWARD. [Date Entered: 10/12/04, By: sf]
11/09/2004	60	<u>Yes: 4 Page(s); 80 KB; PDF</u>	Motion for class certification and summary judgment for pla. peanut farmers in other states, cs. [Date Entered: 01/05/05, By: dh]
11/09/2004	61	<u>Yes: 11 Page(s); 390 KB; PDF</u>	Memorandum by plaintiffs in support of [60-1] motion for class certification and summary judgment for pla. peanut farmers in other states, cs [Date Entered: 01/05/05, By: dh]

11/22/2004	62	Yes: 3 Page(s); 58 KB; PDF	Motion for setting of formula for calculation of damages and establishment of common fund for all class members, cs. [Date Entered: 01/05/05, By: dh]
11/22/2004	63	Yes: 25 Page(s); 922 KB; PDF	Memorandum in support of [62-1] motion for setting of formula for calculation of damages and establishment of common fund for all class members, cs. [Date Entered: 01/05/05, By: dh]
11/29/2004	64	Yes: 4 Page(s); 134 KB; PDF	Response by deft's in opposition to [60-1] motion for class certification and summary judgment for pla. peanut farmers in other states, cs. [Date Entered: 01/05/05, By: dh]
12/09/2004	65	Yes: 4 Page(s); 91 KB; PDF	Motion by plaintiffs for status conf. and hearing on pending pretrial issues, cs. [Date Entered: 01/05/05, By: dh]
12/15/2004	66	Yes: 2 Page(s); 37 KB; PDF	Motion by deft's for adoption of damages formula, cs. [Date Entered: 01/05/05, By: dh]
12/15/2004	67	No	Memorandum by deft's in support of [66-1] motion for adoption of damages formula, cs. [Date Entered: 01/05/05, By: dh]
12/15/2004	67	Yes: 26 Page(s); 992 KB; PDF	Response by deft's to [62-1] motion for setting of formula for calculation of damages and establishment of common fund for all class members, cs. [Date Entered: 01/05/05, By: dh]
12/22/2004	68	Yes: 3 Page(s); 60 KB; PDF	Motion to extend time to respond to deft's memorandum in support of deft's motion for adoption of damages...., cs. cy to Clerk w/p.o. [Date Entered: 01/05/05, By: dh]
12/30/2004	69	Yes: 1 Page(s); 26 KB; PDF	Order granting [68-1] motion to extend time to respond to deft's memorandum in support of deft's motion for adoption of damages....to and including ten (10) days from the date of service. signed by Michael D. Brooks, Acting Clk.. ccyserved 12/30/04. [Date Entered: 01/05/05, By: dh]
01/06/2005	--	No	Motion(s) submitted: [66-1] motion for adoption of damages formula submitted, [65-1] motion for status conf. and hearing on pending pretrial issues submitted, [62-1] motion for setting of formula for calculation of damages and establishment of common fund for all class members submitted, [60-1] motion for class certification and summary judgment for pla. peanut farmers in other states submitted. UPDATED DOCKET SHEET TO JUDGE HOWARD FOR CONSIDERATION. [Date Entered: 01/06/05, By: dh]
01/10/2005	70	Yes: 38 Page(s); 5636 KB; PDF	Reply to response to [62-1] motion for setting of formula for calculation of damages and establishment of common fund for all class members, cs. cy to Judge Howard. [Date

			Entered: 01/26/05, By: dh]
01/26/2005	71	Yes: 1 Page(s); 22 KB; PDF	Order denying [50-1] motion for reconsideration of [47-1] order signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 01/26/05, By: dh]
01/31/2005	72	Yes: 13 Page(s); 476 KB; PDF	Deft's Reply to response to [66-1] motion for adoption of damages formula, cs. [Date Entered: 02/08/05, By: dh]
09/22/2005	73	Yes: 1 Page(s); 32 KB; PDF	Order denying [48-1] motion to Transfer Virginia Plaintiffs or Other Plaintiffs to Appropriate Venues. The court finds no basis for amending its July 22, 2004, order. signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 09/22/05, By: dh]

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**Docket Sheet for 4:05-cv-8 USDC North Carolina Eastern District**

U.S. District Court  
Eastern District of North Carolina (New Bern)

CIVIL DOCKET FOR CASE #: 05-CV-8

In re: Peanut Crop I v. Davidson  
Assigned to: Judge Malcolm J. Howard  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None

Filed: 11/09/04

Nature of Suit: 190  
Jurisdiction: US Defendant

Cause: 07:499 Agricultural Commodities Act

IN RE: PEANUT CROP INSURANCE  
LITIGATION, MDL-1634  
plaintiff

R. Daniel Boyce  
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Birmingham, AL 35203  
205-324-3600  
FTS 324-3636

v.

ROSS J. DAVIDSON,

Eric D. Gouljian

**EXHIBIT**

tabbies

2

Administrator for Risk  
Management Agency  
defendant

[COR LD NTC]  
U.S. Attorney's Office  
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310 New Bern Ave.

Suite 800  
Raleigh, NC 27601-1461  
919-856-4530  
FTS 856-4821

IN RE: PEANUT CROP INSURANCE LITIGATION, MDL-1634

plaintiff

v.

ROSS J. DAVIDSON, Administrator for Risk Management Agency

defendant

### Proceedings include all events

Date Filed	Doc. No.	Image	Description
11/09/2004	1	No	Transfer Order - re: MDL 1634. signed by William Terrell Hodges, Chairman. [Date Entered: 01/20/05, By: dh]
11/09/2004	--	No	Reference must be made to the individual docket sheet for entries relating only to individual actions. [Date Entered: 01/20/05, By: dh]
01/21/2005	2	<u>Yes: 5 Page(s); 126 KB; PDF</u>	Order - (ALL CASES) Practice and Procedure Order Number One Upon Transfer - (see order for details) signed by Malcolm J. Howard, US Judge. ccys served to Mr. Boyce, Mr. Gouljian and Mr. Hollis. [Date Entered: 01/21/05, By: dh]
01/21/2005	3	<u>Yes: 1 Page(s); 25 KB; PDF</u>	Order Scheduling Hearing - (ALL CASES) Motion hearing before Judge Malcolm J. Howard scheduled for Thursday, February 17, 2005 at 10:00 a.m. in G'ville signed by Malcolm J. Howard, US Judge. ccys to Mr. Boyce, Mr. Gouljian and Mr. Hollis. Cy to Becky Bowen for Court Reporter. Calendar Copy. [Date Entered: 01/21/05, By: dh]
01/26/2005	--	No	Clerk's Office Received Second Consent Protective Order from counsel. Original forwarded to Judge Howard's Chamber. [Date Entered: 01/26/05, By: dh]
01/27/2005	4	<u>Yes: 3 Page(s); 107 KB; PDF</u>	Second Consent Protective Order - (Individual Cases: 4:04-CV-186-H2;187-H2;188-H2;189-H2;190-H2;191-H2) as to production of potential class members for the purpose of providing class notice...see order for complete details.signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 01/27/05, By: dh]
01/31/2005	5	<u>Yes: 2 Page(s); 47 KB; PDF</u>	Deft's Motion for adoption of damages formula in transferred cases. Filed in Case No's. 4:04-CV-186-H2; 187-H2; 188-H2; 189-H2: 190-H2 and 191-H2. cy to Judge Howard 2/2/05. [Date Entered: 02/08/05, By: dh]

01/31/2005	6	Yes: 2 Page(s); 57 KB; PDF	Deft's Motion to dismiss or alternatively for summary judgment in transferred cases, cs. Individual Case No's. 4:04-CV-186-H2; 187-H2; 188-H2; 189-H2; 190-h2 and 191-H2. cy to Judge Howard 2/2/05. [Date Entered: 02/08/05, By: dh]
02/15/2005	7	Yes: 9 Page(s); 272 KB; PDF	Notice of Filing by defendants of Declaration of David Clauser in support of their Motion for Adoption of Damages Formula - Individual Cases 4:04-CV-159-H2; 186-H2; 187-H2; 188-H2; 189-H2; 190-H2 and 191-H2, cs. w/attachments. [Date Entered: 02/17/05, By: dh]
02/17/2005	--	No	Motion hearing held in G'ville before Judge Malcolm J. Howard. Courtroom Deputy - Delsia Heath. Court Reporter - Edith Thompson. Plaintiff's Counsel - R. Daniel Boyce, Eugene Boyce & Paul Garrison, Alabama Attorney. Defendant's Counsel - Eric Gouliau, AUSA, EDNC, Kent Porter, AUSA, EDVA, Don Brittenham, Atty. with USDA and Mark Simpson, Atty. with USDA. Court reviews history of case and pending motions. Court hears argument from counsel as to the issue of class certification and the issue of damages calculation formula and establishment of common fund. Plaintiff present evidence by sworn testimony. Court directs counsel to draft Proposed Orders as to the issue of Class Action and Formula and a draft of the Judgment. Proposed Orders to be forward to the Court by the first of March. Court sets Status Conference for Tuesday, March 15, 2005. Total Hearing Time 3 hrs. [Date Entered: 02/17/05, By: dh]
02/17/2005	8	Yes: 4 Page(s); 103 KB; PDF	(ALL CASES) Motion by plaintiff peanut farmers for discovery order compelling production of documents, cs. [Date Entered: 02/17/05, By: dh]
02/17/2005	9	Yes: 12 Page(s); 378 KB; PDF	(ALL CASES) Memorandum in support of [8-1] motion for discovery order compelling production of documents, cs. [Date Entered: 02/17/05, By: dh]
02/17/2005	10	Yes: 9 Page(s); 240 KB; PDF	Motion by Class Counsel on behalf of potential class members, with memorandum in support of for certification of national class action. Individual Cases 4:02-CV-159-H2; 186-H2; 187-H2; 188-H2, 189-H2, 190-H2 and 191-H2, cs. [Date Entered: 02/17/05, By: dh]
02/23/2005	---	No	Issued Notice of Hearing: setting status conference before Judge Malcolm J. Howard for 10:00 3/15/05 in G'ville. cys served. Copy to Becky for Court Reporter. [Date Entered: 02/23/05, By: dh]
			Amended Certificate of service by In re: Peanut Crop Ins. Litigation - re: Motion for Certification of Nationa Class



02/23/2005	11	<u>Yes: 2 Page(s); 46 KB; PDF</u>	Action (and Incorporated Memo. of Law) - Individual Cases 4:02-CV-159-H2; 4:04-186; 4:04-187; 4:04-188; 4:04-189; 4:04-190 and 4:04-191. [Date Entered: 02/24/05, By: dh]
02/25/2005	12	<u>Yes: 3 Page(s); 62 KB; PDF</u>	Document filed by plaintiff titled: (ALL CASES) Memorandum of Additional Points and Authorities, cs. cy to Judge Howard. [Date Entered: 03/01/05, By: dh]
03/01/2005	13	No	Notice of Filing by Ross J. Davidson - (ALL CASES) of Proposed Order. [Date Entered: 03/03/05, By: dh]
03/01/2005	--	No	Letter date 3/1/05 From: Dan Boyce Re: Proposed Final Judgment [Date Entered: 03/03/05, By: dh]
03/03/2005	14	<u>Yes: 6 Page(s); 115 KB; PDF</u>	(ALL CASES) Response in opposition by Ross J. Davidson to [8-1] motion for discovery order compelling production of documents, cs. [Date Entered: 03/11/05, By: dh]
03/04/2005	15	<u>Yes: 3 Page(s); 59 KB; PDF</u>	(ALL CASES) Motion by plaintiff to file amended memor. in support of motion for certification of Nat'l. Class Action, cs. [Date Entered: 03/11/05, By: dh]
03/04/2005	16	<u>Yes: 14 Page(s); 450 KB; PDF</u>	(ALL CASES) Amended Memorandum in support of [15-1] motion to file amended memor. in support of motion for certification of Nat'l. Class Action, cs. cy to Judge Howard. [Date Entered: 03/11/05, By: dh]
03/07/2005	--	No	Transcript Filed - regarding motion hearing on 2/17/05 before Judge Malcolm J. Howard in G'ville - Court Reporter - Edith Thompson [Date Entered: 03/11/05, By: dh]
03/09/2005	17	<u>Yes: 5 Page(s); 105 KB; PDF</u>	(ALL CASES) Notice of Filing by Ross J. Davidson of Exhibit 3 to declaration of David Clauser. cy to Judge Howard. [Date Entered: 03/11/05, By: dh]
03/09/2005	18	<u>Yes: 2 Page(s); 47 KB; PDF</u>	(ALL CASES) Motion by Ross J. Davidson to re-schedule status conf., cs. cy to Judge Howard. [Date Entered: 03/11/05, By: dh]
03/09/2005	19	<u>Yes: 1 Page(s); 22 KB; PDF</u>	(ALL CASES) Order granting [18-1] motion to re-schedule status conf., reset status conference before Judge Malcolm J. Howard for 3/18/05 in jury room in G'ville signed by Malcolm J. Howard, US Judge. ccys served. CalendarCopy. [Date Entered: 03/11/05, By: dh]
03/23/2005	--	No	Motion(s) submitted: [15-1] motion to file amended memor. in support of motion for certification of Nat'l. Class Action submitted, [10-1] motion for certification of national class action submitted, [8-1] motion for discovery order compelling production of documents submitted, [6-1] motion to dismiss submitted, [5-1] motion for adoption of

			damages formula in transferred cases submitted. CASE FILE TO JUDGE HOWARD FOR CONSIDERATION. [Date Entered: 03/23/05, By: dh]
03/24/2005	20	Yes: 8 Page(s); 308 KB; PDF	(ALL CASES) Response by Ross J. Davidson in opposition to [10-1] motion for certification of national class action, cs. Copy to Judge Howard. [Date Entered: 03/30/05, By: dh]
03/25/2005	21	No	(ALL CASES) Motion by In re: Peanut Crop Ins. for class certification and summary judgment for pla. peanut farmers in other states, cs. Copy to Judge Howard. [Date Entered: 03/30/05, By: dh]
03/25/2005	21	Yes: 3 Page(s); 67 KB; PDF	(ALL CASES) Motion by In re: Peanut Crop I for summary judgment and motion for setting of formula for calculation of damages and establishment of common fund for all class members in transferred cases, cs. Copy to Judge Howard. [Date Entered: 03/30/05, By: dh]
03/25/2005	22	Yes: 3 Page(s); 43 KB; PDF	(ALL CASES) Notice of Filing by In re: Peanut Crop Ins. of exhibits introduced at the Status Hearing on March 18, 2005, w/attached exhibits, cs. Copy to Judge Howard. [Date Entered: 03/30/05, By: dh]
03/31/2005	23	Yes: 5 Page(s); 140 KB; PDF	(ALL CASES) Order granting plaintiff's [21-1] motion for class certification and summary judgment for pla. peanut farmers in other states, denying defendant's [6-1] motion to dismiss. Def't's motion for reconsideration is alsodenied. Pla's motion for class certification is granted and class counsel and class representatives were appointed as stated in this order (see order for details.) Class counsel shall send class notice to all potential class members as soon as practicable as required by Federal Rule of Civil Procedure 23. signed by Malcolm J. Howard, USJudge. ccys served. [Date Entered: 03/31/05, By: dh]
03/31/2005	24	Yes: 8 Page(s); 239 KB; PDF	Order granting in part, denying in part [21-1] motion for setting of formula for calculation of damages and establishment of common fund for all class members in transferred cases, granting in part, denying in part [5-1] motion for adoption of damages formula in transferred cases. The formula as established in this order shall be used in calculating the total damages due to each individual class member (see order for details.) signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 03/31/05, By: dh]
04/08/2005	25	Yes: 3 Page(s); 52 KB; PDF	(ALL CASES) Motion by In re: Peanut Crop I to extend time to file reply brief, cs. cy to Judge Howard. [Date Entered: 04/08/05, By: dh]
			(ALL CASES) Order granting [25-1] motion to extend time

04/08/2005	26	Yes: 1 Page(s); 18 KB; PDF	to file reply brief to deft's opposition to pla's motion for certification of national class action. Reply to Response to Motion reset to 4/20/05 for [10-1] motion for certification of national class action signed by Malcolm J. Howard, US Judge. ccys served. [Date Entered: 04/08/05, By: dh]
04/20/2005	27	No	(ALL CASES) Reply by In re: Peanut Crop to response to [10-1] motion for certification of national class action, cs. [Date Entered: 04/22/05, By: dh]
04/22/2005	--	No	Motion(s) submitted: [10-1] motion for certification of national class action submitted. CASE FILE TO JUDGE HOWARD FOR CONSIDERATION. [Date Entered: 04/22/05, By: dh]
05/03/2005	28	Yes: 10 Page(s); 459 KB; PDF	(ALL CASES) Order On Notice To Class Members - the Notice to Class Members is hereby approved. Class counsel are hereby Ordered to send the Class Notice to each member of the Class as soon as practicable. signed by Malcolm J. Howard, US Judge. ccys served. Individual Case Nos: 4:04-186; 4:04-187; 4:04-188; 4:04-189; 4:04-190; 4:04-191 & 4:05-2. [Date Entered: 05/03/05, By: dh]
09/06/2005	29	Yes: 13 Page(s); 372 KB; PDF	Motion by In re: Peanut Crop Insurance Litigation to begin class administration and request for status conference, cs. Copy to Judge Howard. [Date Entered: 09/13/05, By: dh]
09/06/2005	30	Yes: 17 Page(s); 580 KB; PDF	Renewed Motion by In re: Peanut Crop Insurance Litigation to certify this case as a national class action and supplemental memorandum of additional points and authorities, cs. Copy to Judge Howard. [Date Entered: 09/13/05, By: dh]

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JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

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DOCKET NO. 1634

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE PEANUT CROP INSURANCE LITIGATION 2:03cv120

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE  
PANEL

### TRANSFER ORDER

This litigation currently consists of seven actions listed on the attached Schedule A and pending, respectively, in the Middle District of Alabama, the Northern District of Florida, the Middle District of Georgia, the Eastern District of North Carolina, the District of South Carolina, the Eastern District of Texas, and the Eastern District of Virginia.<sup>1</sup> Plaintiffs in the seven actions move the Panel, pursuant to 28 U.S.C. § 1407, for an order centralizing this litigation in the Eastern District of North Carolina. The defendants in the actions, who are the United States, two United States Government officials, and three United States departments or agencies, oppose transfer. If the Panel determines to order transfer over their objections, then these defendants suggest that the Eastern District of Virginia would be an appropriate transferee district.

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Eastern District of North Carolina will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiff peanut farmers in each action allege that common defendants on or after May 13, 2002, unlawfully and unilaterally imposed modifications to the Multiple Peril Crop Insurance Policy for Year 2002, which changed the plaintiff farmers' insurance coverage by reducing it from \$.31 to \$ 1775 per pound of peanuts. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to jurisdictional and class certification matters), and conserve the resources of the parties, their counsel and the judiciary.

Objecting defendants have argued that Section 1407 transfer would circumvent the requirements of 7 U.S.C. § 1508 (j)(2)(a), which provides that actions on crop insurance claims may

<sup>1</sup>The Section 1407 motion, as originally filed, also pertained to an additional action brought in the United States Court of Federal Claims. Movants subsequently withdrew this action from the list of actions encompassed by their motion in recognition of the fact that the action had been dismissed and was on appeal. Also, the Panel has been notified of one additional related action recently filed in the Middle District of Alabama. In light of the Panel's disposition of this docket, this action will be treated as a potential tag-along action. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

EXHIBIT

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- 2 -

be brought only in the district court for the district in which the insured farm is located. Opponents argue that because of this clear Congressional mandate that a federal court, in a particular district, possesses exclusive jurisdiction to entertain certain farmers' crop insurance claims, the Panel cannot or should not exercise its Section 1407 authority to transfer multiple such actions to a single district for coordinated or consolidated pretrial proceedings. We note, however, that in considering transfer under Section 1407, the Panel is not encumbered by considerations of venue. *In re Great Western Ranches Litigation*, 369 F.Supp. 1406, n.1 (J.P.M.L. 1974). An opposite conclusion would frustrate the essential purpose of Congress in enacting Section 1407 and providing for transfer of civil actions to "any district" by the Panel, namely, to permit centralization in one district of all pretrial proceedings when civil actions involving one or more common questions of fact are pending in different districts. See *In re Matter of New York City Municipal Securities Litigation*, 572 F.2d 49 (2<sup>nd</sup> Cir. 1978). We also note that any action transferred under Section 1407 for coordinated or consolidated pretrial proceedings that has not been terminated in the transferee district court will be remanded to its transferor district for trial. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. 425, 436-38 (2001).

In concluding that the Eastern District of North Carolina is an appropriate forum for this docket, we note that the proceedings are furthest advanced in that district, which is also well equipped with the resources that this docket is likely to require.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of North Carolina are transferred to the Eastern District of North Carolina and, with the consent of that court, assigned to the Honorable Malcolm J. Howard for coordinated or consolidated pretrial proceedings with the action pending in that district and listed on Schedule A.

FOR THE PANEL:



---

Wm. Terrell Hodges  
Chairman

SCHEDULE A

MDL-1634 -- In re Peanut Crop Insurance Litigation

Middle District of Alabama

MDAL

*Terry E. Beasley, et al. v. Ross J. Davidson, et al.*, C.A. No. 1:03-500

Northern District of Florida

NDFL

*Florida Peanut Farmers, et al. v. Ross J. Davidson, et al.*, C.A. No. 5:03-107

Middle District of Georgia

MDGA

*Georgia Peanut Farmers, et al. v. Ross J. Davidson, et al.*, C.A. No. 1:03-175

Eastern District of North Carolina

EDNC

*Marvin Taylor Barnhill, et al. v. Ross J. Davidson, et al.*, C.A. No. 4:02-159

District of South Carolina

SCD

*Wallace A. Berry, et al. v. Ross J. Davidson, et al.*, C.A. No. 3:03-1631

Eastern District of Texas

EDTX

*Texas Peanut Farmers, et al. v. Ross J. Davidson, et al.*, C.A. No. 2:03-120

Eastern District of Virginia

EDVA

*Tom Clements, et al. v. Ross J. Davidson, et al.*, C.A. No. 2:03-352



U.S. Department of Justice

Civil Division

PK:DMC:JVanneman  
154-03-445

Telephone: (202) 307-1011  
Fax: (202) 514-8624

Washington, D.C. 20530

August 15, 2003

Mr. R. Daniel Boyce  
Boyce & Isley  
Post Office Box 1990  
Raleigh, North Carolina 27602-1990

Re: Texas Peanut Farmers, et al. v. United States,  
No. 03-445C (Fed. Cl.)

Dear Mr. Boyce:

This letter is to respond, on behalf of the United States Department of Justice, to your letter dated July 30, 2003. In your letter, you propose a dismissal of this action, subject to a variety of conditions. We cannot agree to your proposal, for the following reasons.<sup>1/</sup>

Jurisdiction. As a threshold matter, there is a specific statutory provision that provides that jurisdiction to entertain these types of claims resides exclusively in the Federal district court in which the peanut farm is located. Given the sovereign immunity issues involved when a party sues the United States, the parties cannot stipulate to jurisdiction in a court in which jurisdiction does not properly lie. Therefore, it is not possible for all of the cases that you have filed on behalf of peanut farmers in various district courts to be adjudicated all in one district court, the Eastern District of North Carolina (the first case you filed).

<sup>1/</sup> We are still researching various issues, so this letter is a preliminary response. We reserve the right to amend and/or supplement our response to your letter at a later date.

EXHIBIT

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The statute at issue that governs claims involving Federal crop insurance is 7 U.S.C. §1508(j)(2)(A).<sup>2/</sup> See Williams Farms of Homestead, Inc. v. Rain and Hail Insurance Services, 121 F.3d 630 (11th Cir. 1997). This statute governs jurisdiction and cannot be waived. Therefore, we cannot enter into the type of "stipulation" that you propose.

As we establish in our motion to dismiss, the Court of Federal Claims lacks jurisdiction to entertain the suit. Each plaintiff must file his or her suit in the appropriate district court, that is, the court in which his or her farm(s) are located.<sup>3/</sup>

In addition, even if the potentially dispositive issues (e.g., alleged breach of contract and violation of due process) are purely issues of law, all of the remaining issues would clearly be fact-bound (e.g., whether there was an insurable cause of loss, whether each individual farmer complied with all of the terms and conditions of the insurance policy). These and other factual issues (including potential damages issues) may depend

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<sup>2/</sup> In our motion to dismiss, we established that a plaintiff peanut farmer who holds Federal crop insurance must file in an appropriate district court. While we cited 7 U.S.C. §1506(d) (any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business), it is the section cited above, 7 U.S.C. §1508(j)(2)(A), that is more specific and governs here. The statute, 7 U.S.C. §1508(j)(2)(A), requires that a plaintiff, such as the ones you represent, who asserts a claim for indemnity, must file in the district court in which the insured farm is located.

<sup>3/</sup> For a listing of district courts and their areas of jurisdiction, see 28 U.S.C. Chapter 5, §81 (Alabama), §89 (Florida), §90 (Georgia), §113 (North Carolina), §121 (South Carolina), §124 (Texas), §127 (Virginia).

In your letter, you also refer to 28 U.S.C. §1407, governing multidistrict litigation. If you are aware of any authority that would permit the type of transfer to one court, in suits involving the United States involving the types of jurisdictional issues raised in these cases, we would consider any such authority.

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-3-

upon key dates and/or conditions in a particular state and/or peanut-growing region. As another example, there may be important factual differences among peanut-growing regions, states, and counties, and among the plaintiffs, that would affect the merits issues. Further, the opinion that you proffer as an expert opinion (Mr. Gary Bullen) in the North Carolina motion for partial summary judgment provided his opinions only with respect to peanut crop insurance in North Carolina and Virginia (with only tangential reference to South Carolina). Mr. Bullen's affidavit contains no information on any of the other peanut-growing regions at issue in the other cases (e.g., Georgia, Florida, Alabama, Texas).

In sum, it is too early in these sets of cases to reach any possible agreement on any global treatment of these cases. Accordingly, even if there were no jurisdictional or other bars to consolidation, we cannot agree at this time to your proposal to litigate all of the cases in one district court, given the potentially wide variety of factual scenarios among plaintiffs and peanut-growing regions and states.

Transfer. For the same reasons, we cannot stipulate to a transfer of all of the cases to the one case that you filed in the Eastern District of North Carolina. As we established above, the court in North Carolina lacks jurisdiction to entertain claims brought by plaintiffs whose farms are located in another state.

Indeed, for the same reasons, the court in North Carolina may lack jurisdiction to entertain the claim of any particular plaintiff named in that suit if the person's farm is located outside the boundaries of the Eastern District of North Carolina in which you filed. This applies not only to the plaintiffs whose farms are located in Virginia or South Carolina, but also to those whose farms may be located in the Middle or Western Districts of North Carolina.

As another example, only approximately twenty of the more than fifty plaintiffs named in the suit that you filed in the Eastern District of Texas have farms located in that district; other named plaintiffs have farms located in the other three districts for Federal district courts in Texas.

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We are still in the process of reviewing all the named plaintiffs in each suit that you have filed in the several states. There may be other examples of these problems as well with respect to plaintiffs in the other states.

One trial court disposition, one circuit court of appeals. Similarly, because the district court in North Carolina would not possess jurisdiction to entertain the claims of farmers in other Circuits, we cannot agree to only one "trial court disposition," with an appeal to only one Circuit Court, as you suggest. (Further, we do not agree to trial by jury, one of your other conditions.)

Information requested. It is your burden to establish jurisdiction on behalf of each individually-named plaintiff for the court(s) in which you file. I have consulted with many of the Assistant United States Attorneys assigned to these cases and with agency counsel and we request that you provide the following information (some of which is not available to the Government). We request this information so that we may ascertain whether the named plaintiffs in each of the complaints that you have filed are individuals whose farms<sup>4/</sup> are located in the respective (appropriate) districts and so that we may also determine other

---

<sup>4/</sup> We recognize that it may be that an individual who owns a farm for which the farm property boundaries extend beyond more than one county line, or who owns more than one farm in more than one state (and/or more than one district within a state), may properly be named in more than one district court complaint. 7 U.S.C. §1508(j)(2)(A).

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facts relating to other issues that are potentially jurisdictional in nature (see discussion below):

1. name of plaintiff<sup>5/</sup>;
2. address of farm (include county);
3. address of residence (include county);
4. farm number (number assigned by the Farm Services Agency (FSA) and any other pertinent numbers associated with the crop insurance program;
5. name and address of plaintiff's insurance company;
6. whether the plaintiff filed a claim with his or her insurance company (and if so, the date), and if so;
  - a. whether the claim was allowed (and if so, the date), or
  - b. whether the claim was denied (and if so, the date);and,
7. whether the plaintiff filed any notice of appeal to the National Appeals Division (NAD), United States Department of Agriculture (and if so, the date).

I believe that the most prudent course would be first to clarify and correct these jurisdictional and other matters before proceeding in any of the district courts on the merits or any other matters.

Other defenses. We also wish to make clear that, even though one or more of the plaintiffs may be named in the appropriate district court, the Government reserves the right to assert other defenses (which may or may not be jurisdictional in nature), and if we prevail, these defenses would result in a dismissal of that plaintiff's action. These potential defenses include: statute of limitations and/or other time-bars, and/or failure to exhaust administrative remedies.

---

<sup>5/</sup> Please ensure the correct spelling of names. For example, for some of the plaintiffs in the complaint filed in the Court of Federal Claims and also in the Eastern District of Texas, the names are spelled differently.

You should also be aware that there is an inconsistency in your filings; for example, in the Texas complaint, some of the named plaintiffs are listed in the caption of the complaint but not listed in the text of the complaint, while some are in the text of the complaint but not listed in the style of the caption.

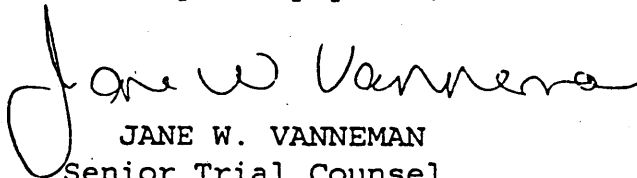
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In addition, there may be other reasons to support the denial of a plaintiff's claim (e.g., whether the plaintiff complied with all the terms and conditions of the insurance policy), which also might support dismissal of the action. Therefore, even if any of the individually-named plaintiffs are or will be in the correct district court, there may be other defenses (in addition to the merits) that would warrant dismissal of the plaintiff's action.

\* \* \*

If you have any questions, please feel free to telephone me at (202) 307-1011 (or on my direct line if you are unable to reach me at the main number).

Very truly yours,



JANE W. VANNEMAN  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division

cc: Mr. Eric Goulian (AUSA, North Carolina)  
Mr. Rand Neeley (AUSA, Alabama)  
Ms. Pat Stout (AUSA, Georgia)  
Ms. Ruth Yeager (AUSA, Texas)  
Mr. Bryan Wilson (AUSA, Florida)  
Ms. Terri Bailey (AUSA, South Carolina)  
Mr. Kent Porter (AUSA, Virginia)  
Ms. Kim Arrigo (USDA, OGC, Washington, D.C.)  
Mr. Mark Simpson (USDA, OGC, Atlanta)

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G. Eugene Boyce  
R. Daniel Boyce  
Philip R. Isley  
Laura Boyce Isley

November 5, 2004

(VIA FACSIMILE 856-4821  
AND UNITED STATES MAIL)

Mr. Eric D. Goulian  
Assistant U. S. Attorney  
310 New Bern Avenue  
Suite 800  
Raleigh, North Carolina 27601-1461

Re: Barnhill *et al* v. Davidson, *et al*  
No. 4:02-CV-159-H(4)

Dear Eric:

As you know, the Judicial Panel on Multidistrict Litigation has issued its Order transferring all cases to the Eastern District of North Carolina. I am requesting that the Court hold a status conference and hearing on the transfer and any other pending motions. Please advise what, if any, issues you would like to be discussed at the hearing, along with any proposed dates for the hearing. I will check with the Clerk's Office to see the next available hearing date that is mutually convenient. If you can give me several weeks in which you are available, I will try to find a mutually acceptable date. If I do not hear from you by November 11, 2004, I will assume that you do not wish to agree to any of the above information.

Also, please advise whether the Government is willing to furnish names of all potential class members in the other states. We received the Court's Order regarding notice to the class members in the Eastern District of North Carolina. We compared the list the Government provided with our internal list of clients and found that there were almost 100 clients who were not considered class members according to the Government's document that you submitted. Before requesting that the Court resolve this matter, it might be that there is some way to resolve this issue. It would be helpful if the Government can go ahead and voluntarily furnish the name of all potential class members in each of the states so we can be working on similar information. Please advise whether you will voluntarily provide this information (we will be happy to enter a similar stipulation or order regarding confidentiality.) If the Government is not willing to provide the information, we will have no recourse but to file a motion with the Court.

EXHIBIT

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Mr. Eric Goulian  
November 5, 2004  
Page 2

Thank you for your prompt attention to these matters.

Sincerely yours,

BOYCE & ISLEY, PLLC

A handwritten signature in black ink, appearing to read "Dan" with a stylized flourish at the end.

R. Daniel Boyce

/sj  
Enclosure  
[11/5/04 ltr e goul]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 4:02-CV-159-H(4)

MARVIN TAYLOR BARNHILL et al.,	)	
Plaintiffs,	)	
	)	DEFENDANTS' RESPONSE TO
v.	)	PLAINTIFFS' FIRST SET OF
	)	INTERROGATORIES
ROSS J. DAVIDSON, ADMINISTRATOR,	)	
RISK MANAGEMENT AGENCY, et al.	)	
Defendants.	)	

Pursuant to Rule 33(b) of the Federal Rules of Civil Procedure, defendants hereby respond as follows to Plaintiffs' First Set of Interrogatories:

INTERROGATORY NO. 1: Provide the total amount of indemnity paid at \$.1775 per pound on the 2002 Multiple Peril Crop Insurance (MPCI) contract for losses by peanut farmers in the following states including each district in each state:

- a. Alabama: Middle District, Northern District, and Southern District;
- b. Florida: Middle District, Northern District, and Southern District;
- c. Georgia: Middle District, Northern District, and Southern District;
- d. North Carolina: Eastern District, Middle District, and Western District;
- e. South Carolina District Court;
- f. Texas: Eastern District, Northern District, Southern District and Western District
- g. Virginia: Eastern District and Western District.

INTERROGATORY NO. 2: Provide the total number of peanut farmers who had MPCI coverage under the 2002 MPCI policy in the following states that were entitled to recover under the 2002 MPCI policy for losses in the 2002 crop year (including each district in each state for the following states):

- a. Alabama: Middle District, Northern District, and Southern District;
- b. Florida: Middle District, Northern District, and Southern District;
- c. Georgia: Middle District, Northern District, and Southern District;
- d. North Carolina: Eastern District, Middle District, and Western District;
- e. South Carolina District Court;
- f. Texas: Eastern District, Northern District, Southern District and Western District
- g. Virginia: Eastern District and Western District.

EXHIBIT

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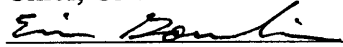
RESPONSE: Defendants object to Interrogatories Nos. 1 and 2 as overbroad in at least two respects. First, both interrogatories encompass losses by peanut farmers whose farms would not have been assigned quota even in the absence of the 2002 Farm Bill. Second, they encompass losses by peanut farmers in districts other than those in which parallel civil actions have been filed.

Without waiving the foregoing objections, Defendants have compiled a listing of all peanut farmers who were paid an indemnity in 2002 in each of the districts where parallel civil actions were filed, including the amount of the indemnity paid to each farmer. This listing will be provided to plaintiffs upon the Court's approval of the Second Consent Protective Order.

This the 17th day of December, 2004.

FRANK D. WHITNEY  
United States Attorney

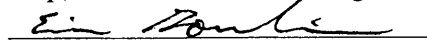
R.A. RENFER, JR.  
Assistant United States Attorney  
Chief, Civil Division



ERIC D. GOULIAN  
Assistant United States Attorney  
310 New Bern Avenue  
Raleigh, North Carolina 27601-1461  
Telephone: (919) 856-4356  
Fax: (919) 856-4487  
Counsel for Defendants

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed by first class mail on this 17th day of December, 2004 to R. Daniel Boyce, Esq., P.O. Box 1990, Raleigh, NC, 27602-1990.



Eric D. Goulian  
Assistant United States Attorney



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

FILED  
2/17/05  
US DISTRICT COURT, EDNC

In Re: Peanut Crop Insurance  
Litigation, MDL-1634

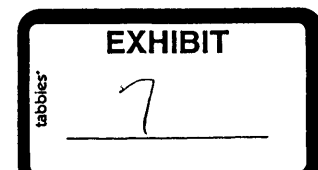
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Master Docket Case No.  
4:05-CV-8-H2  
(ALL CASES)

**MOTION FOR DISCOVERY ORDER COMPELLING  
PRODUCTION OF DOCUMENTS**

NOW COME Plaintiff Peanut Farmers ("Plaintiffs"), by and through the undersigned counsel, and move the Court to compel Defendants to produce previously requested documents pursuant to Rules 26, 34 and 37 of the Federal Rules of Civil Procedure and Local Rule 7.1 EDNC. As grounds for this Motion, Plaintiffs show the Court as follows:

1. Plaintiffs have served one set of Interrogatories during the litigation of this case which included only two requests. Interrogatory No. 1 requested Defendants to provide the total amount of indemnity paid at \$.1775 per pound on the 2002 Multiple Peril Crop Insurance (MPCI) contract for losses by peanut farmers in the following states including each district in each state:
  - a. Alabama: Middle District, Northern District, and Southern District;
  - b. Florida: Middle District, Northern District, and Southern District;
  - c. Georgia: Middle District, Northern District, and Southern District;
  - d. North Carolina: Eastern District, Middle District, and Western District;
  - e. South Carolina District Court;
  - f. Texas: Eastern District, Northern District, Southern District and Western District;
  - g. Virginia: Eastern District and Western District
2. Interrogatory No. 2 requested that Defendants provide the total number of peanut farmers who had MPCI coverage under the 2002 MPCI policy in the following states that



were entitled to recover under the 2002 MPCCI policy for losses in the 2002 crop year (including each district in each state for the following states):

- a. Alabama: Middle District, Northern District, and Southern District;
- b. Florida: Middle District, Northern District, and Southern District;
- c. Georgia: Middle District, Northern District, and Southern District;
- d. North Carolina: Eastern District, Middle District, and Western District;
- e. South Carolina District Court;
- f. Texas: Eastern District, Northern District, Southern District and Western District;
- g. Virginia: Eastern District and Western District.

3. Defendants' response was as follows:

"Defendants object to Interrogatories Nos. 1 and 2 as overbroad in at least two respects. First, both interrogatories encompass losses by peanut farmers whose farms would not have been assigned quota even in the absence of the 2002 Farm Bill. Second, they encompass losses by peanut farmers in districts other than those in which parallel civil actions have been filed."

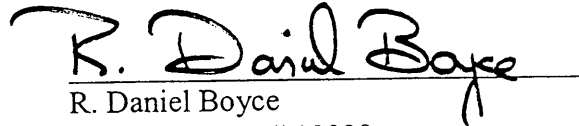
4. Class Counsel also request that the Court order similar information for all similarly situated Plaintiffs in all districts in each state.

5. In order to show a good faith effort in resolving disputes on discovery, undersigned counsel mailed a letter to AUSA Eric Goulian, as well as left a telephone message, asking if there was any way to resolve the differences. AUSA Goulian advised the Government stands by its previously stated position. He advised he would send a letter to that effect; but as of the date of this motion, the letter has not been received.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Honorable Court compel the Defendants to produce the previously requested information and documents as requested in Plaintiffs' First Set of Interrogatories as well as the same information for all districts in each state where similarly situated farmers resided and farmed in 2002 and suffered losses covered by the 2002 MPCCI contract.

Respectfully submitted, this the 17<sup>th</sup> day of January, 2005.

**BOYCE & ISLEY, PLLC**

A handwritten signature in black ink that reads "R. Daniel Boyce". The signature is written in a cursive style and is positioned above a horizontal line.

R. Daniel Boyce

N. C. State Bar # 12329

Post Office Box 1990

Raleigh, North Carolina 27602-1990

Telephone: (919) 833-7373

Facsimile: (919) 833-7536

*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this day a copy of the foregoing *Motion for Discovery Order Compelling Production of Documents* was served upon counsel of record in this action by depositing a copy thereof in the United States mail, postage prepaid, and addressed as follows:

Eric Goulian  
Assistant U. S. Attorney  
Suite 800, Federal Building  
310 New Bern Avenue  
Raleigh, NC 27601-1464

This the 17<sup>th</sup> day of January, 2005.



R. Daniel Boyce  
N. C. State Bar # 12329  
Post Office Box 1990  
Raleigh, North Carolina 27602-1990  
Telephone: (919) 833-7373  
Facsimile: (919) 833-7536

## BOYCE & ISLEY, PLLC

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G. Eugene Boyce  
R. Daniel Boyce  
Philip R. Isley  
Laura Boyce Isley

July 14, 2005

Mr. Eric D. Goulian  
Assistant U. S. Attorney  
310 New Bern Avenue  
Suite 800  
Raleigh, North Carolina 27601-1461

Dear Eric:

Enclosed please find our list of peanut farmers divided by state along with the Government's list. We have compared the two lists and totaled the number of farmers not found on the Government's list. Please review and verify the number of Plaintiffs not on the Government's list. The number of clients not found on the Government's list are set forth below; however some farmers have listed more than one farm.

- Texas- 56
- Florida-4
- South Carolina-1
- Virginia-42
- Alabama-10
- Georgia-47

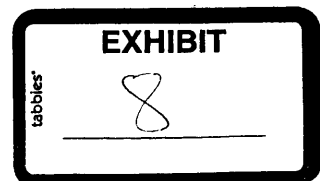
Sincerely yours,

BOYCE & ISLEY, PLLC



R. Daniel Boyce

RDB/mw  
Enclosures





NAME	LAST	FIRST	M.I.	FAARM	ADDRESS	CITY	COUNTY	STATE	ZIP	HOME TEL	TELEPHONE	SECOND TEL	PHONE	MC RES
Mr.	Barney	Bill	M.		940 S. Lamar Street	Da Leon	Comanche	TX	76444	254-693-2428		254-734-6234	213	
Mr.	Bloomman	Jacob	F.		RL 3 Box 63	Seminole	Gaines	TX	79360	915-759-9146			0	
Mr.	Brown	Darrel	Wayne		1008 Acker 116	Elkhart	Anderson	TX	79360	915-759-9146			32.5	
Mr.	Carroll	William	Dwight		3450 Hwy 2247	Comanche	Comanche	TX	79442	254-942-5255			254	
Mr.	Decker	Randy	D	Farm # 455, 4658	2806 CR 510	Dublin	Comanche	TX	76445	254-995-9701			254-967-3406	22
Mr.	Fackler	Loraine	Estelle		1100 Blended Road	Pied Point	Denton	TX	76228	940-686-3347			35	
Mr.	Fisher	Clark			RL 2 Box 17-7	Honey Grove	Lamar	TX	76448	803-784-3085			144	
Mr.	Gage	Bill			512 Sallik Street C	Groesland	Houston	TX	77454	936-784-3085			32	
Mr.	Graham	Jay			6025 FM 2214	Waller	Houston	TX	77454	936-784-3085			215	
Mr.	Groesland	David & Pam	D		32653 Hibern Road	Waller	Houston	TX	77454	936-784-3085			117	
Mr.	Hagan	Berry	D		117 County Road 297	Groes	Houston	TX	77454	936-784-3085			36	
Mr.	Hart	Larry	Glen		RL 1 Box 176 B	Groes	Houston	TX	77454	936-784-3085			31	
Mr.	Hart	Isabel	O		1473 C.R. 334	Lincoln	Houston	TX	77454	936-784-3085			35	
Mr.	Isabel	Lonnie	B	Farm 1899	1473 C.R. 334	Lincoln	Houston	TX	77454	936-784-3085			20	
Mr.	Johnson	Tommy			512 Sallik Street C	Groesland	Houston	TX	77454	936-784-3085			28.2	
Mr.	Jones	Proctor			512 Sallik Street C	Groesland	Houston	TX	77454	936-784-3085			14.5	
Mr.	Leah	Luther	Don		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			110	
Mr.	Leah	Robert	D		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			82	
Mr.	Moore	Ronald	Scott		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Lamar	Loyel			16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			119	
Mr.	Larson	R. B.	Glen		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Leatherman	David	S		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Leath	Philip	S		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Logan	J.W.	M		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Mahoney	Timothy	L		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Meador	Edy	R		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Morgan	Tomie	R		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Chwell	Delbert	L		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Parson	Thomas	L		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Patel	Leon	A		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Perryington	Glen			16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Prusti	Alvin			16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Quinton	Alvin			16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Reynolds, Jr.	Walter	Donald		16535 FM 2158	Dublin	Houston	TX	77454	936-784-3085			120	
Mr.	Reynolds, Jr.	Elmer	Wayne										28.4	
Mr.	Reynolds, Jr.	Elmer	Wayne										193	
Mr.	Reynolds, Jr.	Elmer	Wayne										20	
Mr.	Reynolds, Jr.	Elmer	Wayne										7.6	
Mr.	Reynolds, Jr.	Elmer	Wayne										44.9	
Mr.	Reynolds, Jr.	Elmer	Wayne										86	
Mr.	Reynolds, Jr.	Elmer	Wayne										650	
Mr.	Reynolds, Jr.	Elmer	Wayne										391	
Mr.	Reynolds, Jr.	Elmer	Wayne										294	
Mr.	Reynolds, Jr.	Elmer	Wayne										380	
Mr.	Reynolds, Jr.	Elmer	Wayne										28	
Mr.	Reynolds, Jr.	Elmer	Wayne										417	
Mr.	Reynolds, Jr.	Elmer	Wayne										389	
Mr.	Reynolds, Jr.	Elmer	Wayne										65	
Mr.	Reynolds, Jr.	Elmer	Wayne										129	
Mr.	Reynolds, Jr.	Elmer	Wayne										21	
Mr.	Reynolds, Jr.	Elmer	Wayne										9.4	
Mr.	Reynolds, Jr.	Elmer	Wayne										52	
Mr.	Reynolds, Jr.	Elmer	Wayne										150	
Mr.	Reynolds, Jr.	Elmer	Wayne										259	
Mr.	Reynolds, Jr.	Elmer	Wayne										282.9	
Mr.	Reynolds, Jr.	Elmer	Wayne										252.9	
Mr.	Reynolds, Jr.	Elmer	Wayne										186.6	
Mr.	Reynolds, Jr.	Elmer	Wayne										28.3	
Mr.	Reynolds, Jr.	Elmer	Wayne										380	

NAME LAST	FIRST	M.A.	FAMILY NAME	ADDRESS	CITY	COUNTY	STATE	ZIP	FAX	TELEPHONE	SECURITY TELEPHONE	ADDRESS	TELEPHONE
Mr. Barnes	James	C		4974 Hartford Road	Marion	Jackson	FL	32446	850-4827-475		850-482-7168	127	
Mr. Beauchamp, Jr. J		L		889 Cascade Lane	Marion	Jackson	FL	32448	850-762-3882			45	
Mr. Blackmon	Preston	W		4682 Hwy 4	Jay	Santa Rosa	FL	32585	850-675-2489		850-675-4667	131	
Mr. Diamond	Joseph	M		12780 Chumucka Hwy	Jay	Santa Rosa	FL	32585	850-675-2772		850-675-6480	160 B	
Mr. Ditty	Joseph	C		5464 McAnally Road	Barcoom	Jackson	FL	32423	850-589-2804		850-208-2108	115	
Mr. Edwards	Allen	J		2108 Mineral Springs Road	Jay	Santa Rosa	FL	32585	850-675-5706		850-336-5451	82	
Mr. Everett	Kenneth	M		4720 Auburn Rd	Marion	Jackson	FL	32445	850-564-2338			146 B	
Mr. Floyd	Ronald	C		Post Office Box 478	Jay	Santa Rosa	FL	32565	850-675-2126			65	
Mr. Gregg	RD	O		Gregg's Farms	DeFuniak Springs	Madison	FL	32433	850-882-6826			85	
Mr. Jones	Wyman	L		6037 Jay's Way	Madison	Santa Rosa	FL	32570	850-623-2893		850-675-0383	5	
Mr. Lowry	Darrie	Frank		2118 Lee Monte Road	Jay	Santa Rosa	FL	32585	850-675-8972		850-482-9759	51	
Mr. Mooneyham, Jr.	William	M		3146 Daroff Road	Grand Ridge	Jackson	FL	32442	850-582-8542		850-482-8700	19	
Mr. Peterson	Franklin	R		1555 Shiloh Church Loop	Grandville	Jackson	FL	32440	850-283-3625				

NAME LAST	FIRST	MR.	FARM NAME	ADDRESS	CITY	COUNTY	STATE	ZIP	PHONE	SECOND PHONE	THIRD PHONE	MOBILE	BO
Mr. Barry	Wallace	A	W.A. Barry & Son	680 Broomfield Road	Bishopville	Lee	SC	29016	803-428-3853				
Marsh	William	FR	Will Marsh Farms	6850 T.D. McLeod Road	Rehoboth		SC	29128	803-452-7437				

TITLE	LAST	FIRST	M.I.	FARM NAME	ADDRESS	CITY	COUNTY	STATE	ZIP	FIRST TELEPHONE	SECOND TELEPHONE	AVENUE
Mr.	Adenrath	James	D		24101 Courthouse Road	Stony Creek	Sussex	VA	23982	804-478-4639		50
Ms.	Allen	Pauline	W		358 Hilltop Lane	Stagers	Greensville	VA	23879	434-634-5367		28.5
Mr.	Allen	Joseph	Michael		358 Hilltop Lane	Stagers	Greensville	VA	23879	434-634-5367		68
Mr.	Allen	Henry	Stephen		358 Hilltop Lane	Stagers	Greensville	VA	23878	434-634-8025		63
Mr.	Allen	Ronnie	L		6454 Bank Road	Emporia	Greensville	VA	23847	434-348-3167		60
Ms.	Allen	Sherran	F		847 Allen Town Road	Emporia	Greensville	VA	23847	434-634-6804		7
Mr.	Allen	Gilbert	Earl		2587 Beef Road	Emporia	Greensville	VA	23847	434-634-5163		77
Mr.	Allen, Sr.	Cecil	W		1167 Heits Island Road	Emporia	Greensville	VA	23847	434-634-4236		53
Mr.	Appel, Jr.	John	F	Gum Corner Farms	89 Golden Hill Road	Emporia	Surry	VA	23848	757-294-3815		225.7
Mr.	Bain	William	B		19509 Bain Road	Dinwiddie	Dinwiddie	VA	23841	804-478-4832		500
Mr.	Bain	Warren	C	Bain Plantations, Inc.	14512 Steeple Hollow Road	Dinwiddie	Dinwiddie	VA	23841	804-489-7230		150
Mr.	Barlow	Joseph	H	Cotton Plains Farms, Inc.	888 Cherry Grove Road N.	Suffolk	Suffolk	VA	23432	757-238-2062		53
Mr.	Barnes	Harvey	M		21087 Peters Bridge Road	Yale	Sussex	VA	23887	434-246-4247		186.5
Mr.	Barnes	Richard	R		4079 Staples Lake Road	Emporia	Greensville	VA	23847	434-634-8528		50
Mr.	Barnes	Charles	R		18204 Handwood Creek Road	Stony Creek	Sussex	VA	23882	804-478-4867		17.5
Mr.	Barnes	Francis	W		19105 Baskers Road	Stony Creek	Sussex	VA	23882	804-478-4173		225.6
Mr.	Barnes	Wayne	C		19315 Courthouse Road	Dinwiddie	Dinwiddie	VA	23841	804-489-3118		165
Mr.	Barrett, Jr.	Henry	G		33440 Staplesville Road	Newsoms	Southampton	VA	23874	757-654-8558		14.15
Mr.	Berryman	E	McDonald	Beechland Farms, Inc.	3182 Beechland Road	Emporia	Surry	VA	23848	757-284-3805		48.4
Mr.	Blaha	Alvin	W	Laurel Farms Inc.	10149 Squigled Level Road	Petersburg	Prince George	VA	23803	804-733-0280		93
Mr.	Blount	Theron	H		8074 Blounts Corner Road	Smithfield	Isle of Wight	VA	23430	757-357-2385		64
Mr.	Breslow, Jr.	Alex	W		10080 Pole Run Road	Diglandia	Prince George	VA	23842	804-861-0587		133.3
Mr.	Bra	Johnny	L		655 Deerfield Road	Emporia	Greensville	VA	23947	434-634-4419		96
Mr.	Bra	Rosa	B		677 Deerfield Road	Emporia	Greensville	VA	23947	434-634-4419		17
Mr.	Bra	Joe	R		675 Deerfield Road	Emporia	Greensville	VA	23947	434-634-5039		125.9
Mr.	Brook, Jr.	John	M		1047Baccons Castle Trail	Surry	Surry	VA	23883	757-357-2311		148
Mr.	Brothers	Griffin			8244 Goodrich Lane	Smithfield	Isle of Wight	VA	23430			380
Mr.	Brown	Lawrence	W	Brown Farms	32482 School House Road	Franklin	Southampton	VA	23851	757-682-8248		151.5
Mr.	Bryant	Rosser	E	Slippy Hollow Farms	34442 Sandy Ridge Road	Franklin	Southampton	VA	23851	757-682-8661		15
Mr.	Bryant, Jr.	Raymond	A	Bryant Farms	5620 Longwood Road	Emporia	Greensville	VA	23847	434-634-8844		47.5
Mr.	Bulls	James	A		18211 Sedley Road	Sedley	Southampton	VA	23878	757-682-8404		31.5
Mr.	Bynum	Cecil	R	Cecil R. Bynum Farms, Inc.	6518 Fire Tower Road	Windsor	Southampton	VA	23487	757-242-4504		153
Mr.	Chappell, Jr.	William		Chappell Farms LLC	23010 Carson Road	Dinwiddie	Dinwiddie	VA	23841	804-488-7487		276
Mr.	Clark	Ray		Clark Farms LLC	25408 Mill Run Road	Slany Creek	Sussex	VA	23882	804-478-4381		167
Mr.	Clark	John	M		Post Office Box 110	Dreynville	Southampton	VA	23844	757-653-8750		194
Mr.	Clemens	Tom	M	Walnut Tree Farm	500 Beef Road	Emporia	Greensville	VA	23847	434-634-2075		209.7
Mr.	Clemens	Jeffrey	E		555 Beef Road	Emporia	Greensville	VA	23847	434-634-2075		6
Mr.	Cobb	Robert	C	Cobb's Farm	32450 Sycamore Church Road	Franklin	Southampton	VA	23851	757-682-8026		100
Mr.	Cobb	Catherine	B		34622 Staplesville Road	Newsoms	Southampton	VA	23874	757-654-6758		39.8
Mr.	Cobb	Jessie	T	Tomblin Farm	35025 Bundles Road	Franklin	Southampton	VA	23851	757-682-5832		7
Mr.	Cobb	Reger			14889 Hickory Hill Road	Waverly	Southampton	VA	23889	804-834-2784		175
Mr.	Copeland	Peter	F	Capeca Farms	28085 Bethany School Road	Franklin	Southampton	VA	23851	757-658-9141		90.5
Mr.	Cumpler	Leilia		Sandy Ridge Farms, Inc.	4712 Reeves Pond Drive	Franklin	Southampton	VA	23851	757-652-6730		16.35
Mr.	Cumpler	Edmond	R		9407 Sussex Drive	Stony Creek	Sussex	VA	23882	434-246-6801		34
Mr.	Daniel	Joan	G		4712 Reeves Pond Drive	Chesler	Cheslerfield	VA	23831	804-758-8685		4
Mr.	Daniels	Matthew & George	G	Daniels Brothers	938 Deerfield Road	Emporia	Greensville	VA	23847	434-634-2531		388
Mr.	Doyle	Jeff	R		1828 James River Jct.	Emporia	Greensville	VA	23847	434-634-9885		320
Mr.	Drake	Rodger	R	RE and Rodger R. Drake, Inc.	25232 Drake Drive	Newsoms	Southampton	VA	23874	757-654-9723		127.7
Mr.	Drake	Michael	G	Sandy Ridge Farms, Inc.	31251 Sands Road	Newsoms	Southampton	VA	23874	757-654-6400		134.75
Mr.	Drake	Edward	S		30158 Staplesville Road	Newsoms	Southampton	VA	23874	757-654-6539		151
Mr.	Drake	Rodger	B	D & T Farms	25232 Drake Drive	Newsoms	Southampton	VA	23874	757-654-9723		142.8
Mr.	Drake, Jr.	George	T	George T. Drake & Son, Inc.	32053 Barnes Church Circle	Newsoms	Southampton	VA	23874	757-654-9587		11
Mr.	Drake, Jr.	Walter	F		Post Office 73	Newsoms	Southampton	VA	23874	757-654-0836		154.2
Mr.	Drake, Jr.	Walter	F		31385 Sunbeam Road	Franklin	Southampton	VA	23851	757-682-4882		186
Mr.	Drake, Jr.	Willie		Drake Brothers Farms	31147 Sands Road	Newsoms	Southampton	VA	23874	757-654-6580		180
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		7.5
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		20.2
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		32
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		135.8
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		186.5
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		186.5
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		237
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		194.5
Mr.	Drake, Jr.	Willie		BLD Farms LLC	907 Forest Lane	South Hill	Mecklenburg	VA	23970	434-447-8044		194.5



Mt.	Edwards	Thrupp	I-	Phyllis Edwards Farms	13463 Berns Clayton Boulevard	Suttonville	Isle or Virgin	VA	23830	757-591-2639	757-428-2390	244.7
Mt.	Edwards	Gregory	S	Edwards Farms	29410 Little Texas Road	Branchville	Southampton	VA	23828	434-654-4770	434-658-3310	93
Mt.	Edwards	Drew	A	Edwards Farms	29258 Little Texas Road	Branchville	Southampton	VA	23828	434-658-4728	434-658-3310	93
Mt.	Edwards	Gene			29258 Little Texas Road	Branchville	Southampton	VA	23828	434-658-4728	434-658-3310	28.1
Mt.	Ellis	Partridge &			Post Office Box 176	Boykins	Southampton	VA	23827	757-654-8412	757-357-2945	5.1
Mt.	Eggs	William	H	Oak Grove Dairy	7031 E Colonial Trail	Surry	Surry	VA	23863	757-357-6361		57
Mt.	Everett	L	Randy	E & E Crop Management	18291 Concord Sanguary Road	Silvery Creek	Sussex	VA	23862	434-246-2515		368
Mt.	Everett	Lance	V	Old Hickory Farms, Inc.	26819 Courthouse Road	Capon	Greenwell	VA	23829	434-658-4708	434-658-4640	238
Mt.	Evans, Jr.	Marvin	L	Everett Farms	17413 Everett Road	Emporia	Greensville	VA	23847	434-634-4343		51.6
Mt.	Fajma	John	L	4270 Purdy Road	4270 Purdy Road	Emporia	Greensville	VA	23847	434-634-4343	434-634-4251	425
Mt.	Fajma, Jr.	Ludwig		Sandy Grove Farms, Inc.	4270 Purdy Road	Boykins	Southampton	VA	23827	757-654-0005		7
Mt.	Farms	Wiley			Post Office Box 57	Boykins	Southampton	VA	23827	757-654-6831	757-242-6012	47.5
Mt.	Farms, Inc.	Draper			Post Office Box 128	Winster	Southampton	VA	23487	757-385-0184		300
Mt.	Fells	Bab			18493 Oak Road	Branchville	Southampton	VA	23828	757-654-6240		67
Mt.	Fells	Charles	D		30385 Vicks Millpond Road	Branchville	Southampton	VA	23827	757-654-6528	757-617-9115	90
Mt.	Fells	Brent	P	Fells Farms, Inc.	32222 East Street	Boykins	Southampton	VA	23827	757-654-6528	757-636-1572	100
Mt.	Fells	F			30346 Shiloh Road	Boykins	Southampton	VA	23827	757-654-6528	757-641-8998	135.45
Mt.	Fells	Larry	S		1570 Brine Road	Emporia	Greensville	VA	23847	434-634-4467		96.6
Mt.	Ferguson, Jr.	James (Larri)	S		1570 Brine Road	Emporia	Greensville	VA	23827	434-634-4467	434-630-1335	132.68
Mt.	Ferguson, Sr.	Glenn			15002 Pinopolis Road	Emporia	Greensville	VA	23827	434-634-4467		122
Mt.	Francis	Glen			15955 Pinopolis Road	Boykins	Southampton	VA	23827	434-658-4713	757-539-0246	11
Mt.	Francis	Brian	P		Post Office Box 148	Branchville	Southampton	VA	23828	757-654-8483		108
Mt.	Funell, Jr.	Harold	Carter	Gray Farms	Post Office Box 403	Boykins	Southampton	VA	23827	757-654-8558		30.3
Mt.	Gay, Jr.	Calvin			22427 Cross Keys Road	Nelsons	Southampton	VA	23827	757-654-9895		8
Mt.	Gray	Wayne	WV		34460 Burnt Reed Road	Boykins	Southampton	VA	23827	757-654-9895		8
Mt.	Gray	James	C		34460 Burnt Reed Road	Boykins	Southampton	VA	23827	757-654-9895		108
Mt.	Gray	Roger	G		1419 Brunswick Avenue	Norfolk	Southampton	VA	23510	757-424-2857		24
Mt.	Gray, Jr.	Roger	B		8035 Purdy Road	Emporia	Greensville	VA	23847	434-634-2935	757-689-0876	122
Mt.	Hall	Ira	B		26323 Shawnee Lane	Carroll	Isle of Wight	VA	23815	757-589-8741	804-469-4510	2
Mt.	Harrell	Jesse	C	C.G. Glover Farms, Inc.	6255 Courthouse Road	Church Road	Chesapeake	VA	23830	804-285-0083		72
Mt.	Harrell	J	B		9046 Cherry Lane	Carson	Southampton	VA	23851	757-652-6491		28
Mt.	Harrison	Sandra	B		18032 Lime Pine Road	Franklin	Southampton	SC	29732	757-654-9638		3
Mt.	Harville	Preston	Edward		5374 Kingswood Drive	Rack Hill	Greenville	VA	23847	434-634-5330	434-634-3204	44
Mt.	Heaver	Lisa			1750 Zion Church Road	Emporia	Greenville	VA	23847	434-348-3888		6
Mt.	Hammons	Glenn	H		1698 Fiddlers Road	Emporia	Greenville	VA	23847	434-348-3888		1
Mt.	Hammons	Jimmy			1698 Fiddlers Road	Emporia	Greenville	VA	23847	434-348-3888		3
Mt.	Hammons	Jason			1698 Fiddlers Road	Boykins	Southampton	VA	23827	757-654-9635		49
Mt.	Hammons	Lilly	L		East Street	Boykins	Southampton	VA	23827	757-654-9635	757-377-9536	23
Mt.	Hawthorne	David		Cross Roads Farms	5899 Holykush Road	Spring Grove	Surry	VA	23861	757-294-5767	757-621-1808	13
Mt.	Holdsworth	Edwin	D		2513 Longbeach Lane	Surfok	Surfok	VA	23437	757-688-4751	757-621-3629	11
Mt.	Holland	Edwin	D		65408 Holland Road	Surfok	Surfok	VA	23437	757-688-4751	757-621-3629	11
Mt.	Holloway	Clinton	VJ		19039 Melzer's Mill Road	Jarrett	Sussex	VA	23857	434-246-5985	434-637-7489	11
Mt.	Holloway	Thomas	E	Oak View Farm	17848 Dry Bread Road	Emporia	Greensville	VA	23847	434-634-2949		7
Mt.	Ivey	William	VJ		23154 Stokes Road	Yale	Sussex	VA	23867	434-535-8123		119
Mt.	Jarrett	William	A		Post Office 28	Jarrett	Sussex	VA	23857	434-636-8410		1
Mt.	Jarrett	Benjamin			23116 Stokes Road	Yale	Sussex	VA	23887	434-636-8151		1
Mt.	Jarrett	Benjamin			23116 Stokes Road	Yale	Sussex	VA	23887	434-636-8151		11
Mt.	Jarrett	Benjamin			29436 Johnson Drive	Boykins	Southampton	VA	23847	757-654-8574	757-654-8018	22
Mt.	Johnson	Alvis	Earl		20070 Cabin Point Road	Carson	Southampton	VA	23820	804-834-3954	804-586-5245	25
Mt.	Johnson	Richard	L		7821 Rutlan Boulevard	Surfok	Surfok	VA	23437	757-654-9265		10
Mt.	Johnson	Matthew	J		7821 Rutlan Boulevard	Surfok	Surfok	VA	23437	757-657-6463		301.1
Mt.	Johnson	James	E	J & J Farms	7821 Rutlan Boulevard	Boykins	Southampton	VA	23827	757-654-9802	757-654-8018	15
Mt.	Johnson	Joseph	D		29187 Porter House Road	Boykins	Southampton	VA	23487	757-242-4486	757-630-8757	22
Mt.	Johnson	James	VJ	Jones Farms, Inc.	27008 Little Norfolk Road	Winster	Southampton	VA	23883	757-294-3508		1
Mt.	Jones, Jr.	Thomas	Ray		588 Chestnut Farm	Surry	Surry	VA	23863	757-357-6361	804-901-2888	1
Mt.	Jones, Jr.	Thomas	E		14007 Pinche George Drive	Disruptanla	Prince George	VA	23842	804-733-2888		110
Mt.	Kamusek	William	H		27030 Old Church Road	Disruptanla	Southampton	VA	23842	804-733-2888		2
Mt.	Kendred	Jefferson	L		7985 Rutlan Boulevard	Surfok	Surfok	VA	23437	757-562-2701		2
Mt.	Knight	Jefferson	L		33272 Pinecrest Drive	Boykins	Southampton	VA	23827	757-654-9265		2
Mt.	Knight	Rolo	T		1182 Newsome Lane	Emporia	Greensville	VA	23847	434-634-4574	434-634-3453	6
Mt.	Lasater, Jr.	Barbara	C	Lee Farms	34089 Burnt Reed Road	Boykins	Southampton	VA	23827	757-654-6816		4
Mt.	Lee	Whitner	M		1182 Newsome Lane	Boykins	Southampton	VA	23847	434-634-4574	434-634-3453	4
Mt.	Lee	David	B	Lee Farms	26099 Sussex Drive	Emporia	Greensville	VA	23847	434-634-4574		8
Mt.	Lourey	Preston	T		26099 Sussex Drive	Winster	Southampton	VA	23880	804-834-2609	804-834-8349	9
Mt.	Mamm	J	Michael		34481 Methuen Road	Boykins	Southampton	VA	23827	757-654-9468		113.3



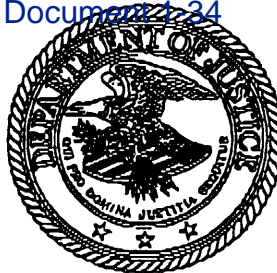
Mr. Mann	Medlin	E	Marks Farms	3432/ Matheson Road	Boykins	Southampton	VA	23827	757-654-9408	757-641-8206	43.62
Mr. Marks	Michael	J	Marks Farms	22833 Popes Garden Road	Carpton	Southampton	VA	23829	434-658-4911	757-641-8206	360
Mr. Matthews	C	G	C.G. Matthews & Son, Inc.	31428 Starville Road	Newsoms	Southampton	VA	23874	757-654-6823	434-634-5049	190.4
Mr. Moore	Glenn	R	Moore Farms	3895 Skippers Road	Skippers	Greenville	VA	23879	434-634-5049	434-634-5062	291
Mr. Moss	Michael	W		958 Meadow Bank Road	Emporia	Greenville	VA	23847	434-634-5928	804-686-8917	77
Mr. Newsome	Patrick	L	Newsome Farms	9771 Little Longwood Road	Emporia	Greenville	VA	23847	434-634-2217		125
Mr. Nottingham, Jr.	John	M		Post Office Box 46	Chertan	Greenville	VA	23316	757-678-7643		55
Mr. Owen	Charles	H	RMC Owen Farm	4428 Hunt Road	Jarratt	Sussex	VA	23867	434-246-3408		154
Mr. Owen	Robert	T	R.T. Owen & Sons L.L.C.	303 Halifax Road	Jarratt	Sussex	VA	23867	434-246-3209	434-535-8282	125
Mr. Parson	Frederick	P		16003 Parson Lane	Stony Creek	Sussex	VA	23882	434-246-4779		53
Mr. Partridge	Eddie	A		25300 Drury Road	Drumville	Southampton	VA	23844	434-658-4457	757-651-8451	160
Mr. Pritchard, Jr.	Robert	D	Pittman Farms	7134 Colonial Trail E	Stony	Southampton	VA	23883	757-357-7094		65
Mr. Pritchard, St.	William	S		313 Ivy Street	Jarratt	Sussex	VA	23867	434-658-9801	804-731-4644	230
Mr. Pope	Jeffrey	W	Magnolia (1068)	13009 Cedar View Road	Drumville	Southampton	VA	23844	434-658-9515	804-370-2224	20.2
Mr. Pope	Sam	E	Home Farm (3257)	13009 Cedar View Road	Drumville	Southampton	VA	23844	434-658-9515	804-370-2224	150
Mr. Pope	Jeffrey	W	Rose Hill (2339)	13009 Cedar View Road	Drumville	Southampton	VA	23844	434-658-9515	804-370-2224	7.5
Mr. Pope	Mark	W	Smith Farm (2417)	13009 Cedar View Road	Drumville	Southampton	VA	23844	434-658-9515	804-370-2224	72.6
Mr. Porter	J.L.	L	B. & R. Farms, Inc.	28168 Sunbeam Road	Newsoms	Southampton	VA	23874	757-652-8484		18.25
Mr. Porter	Bobby	L	B. & R. Farms, Inc.	25405 General Thomas Hwy	Newsoms	Southampton	VA	23874	757-654-9589		105.75
Mr. Powell	Kenny	W		6747 Bank Road	Emporia	Southampton	VA	23847	434-634-9199	434-637-0468	85.5
Mr. Powell, III	Robert	H	Powell Farms L.L.C.	Post Office Box 3037	Norfolk	Southampton	VA	23514	757-624-3245		20
Mr. Read, Jr.	Charles	L	Redd & Redd	5435 W. Blackwater Road	Zuni	Sussex	VA	23888	757-242-6917	757-242-6740	210
Mr. Readout	Charles	W		18803 Hardwood Creek Road	Stony Creek	Sussex	VA	23882	804-478-4925	804-770-7636	70
Mr. Readout, Jr.	Mamie	P		2708 Eagle Rock Road	Pelsterburg	Prince George	VA	23803	804-732-0867		10
Mr. Ruleout	James	R		4415 Hunt Road	Jarratt	Sussex	VA	23867	434-246-2846	434-837-2646	25
Mr. Ruleout, Sr.	James	R		4374 Hunt Road	Jarratt	Sussex	VA	23867	434-246-3088	434-894-0254	145
Mr. Robinson	Jack	C		6755 Bank Road	Emporia	Greenville	VA	23847	434-634-4220		4.9
Mr. Robinson	Mike	R	Randy Robinson Farms	2579 Oldham Road	Emporia	Greenville	VA	23847	434-634-5374	434-634-8957	125
Mr. Robinson	Mike	W	Mike Robinson Farms, Inc.	2498 Oldham Road	Emporia	Greenville	VA	23847	434-634-3500	804-894-0070	214.2
Mr. Rogers	Jerry	L		722 White Marsh Road	Wakefield	Sussex	VA	23868	757-899-4477	757-650-8671	36.8
Mr. Rogers	William	C		2413 Joshua Lane	Wakefield	Sussex	VA	23843	757-539-1276		114
Mr. Savage	William	P		124 E. Pinecreek Road	Wakefield	Sussex	VA	23868	757-899-5151	757-860-6539	11
Mr. Sebera	John	R		22484 Cedar Point Road	Disputanta	Prince George	VA	23842	804-834-2985	804-586-3735	173
Mr. Seward	Robert	W		12612 Old Fady Road	Waverly	Southampton	VA	23890	804-834-2376	804-894-3489	115
Mr. Smith	Carter	A	Carter A. Smith Farms LLC	12616 Finopole Road	Boykins	Southampton	VA	23827	804-834-2415	434-658-4233	50
Mr. Smith	Stuart	M	Silent M. Smith Farms LLC	14508 Daults Lane	Branchville	Southampton	VA	23827	757-854-6483	434-658-4233	50
Mr. Smith	R	L		32412 S Main Street	Boykins	Southampton	VA	23827		757-620-9361	85.4
Mr. Smith	Margaret	R		331 Sussex Court	Suffolk	Southampton	VA	23344	757-834-1478	757-898-2927	332.4
Mr. Speight	Robert	B	Greenway Farms LTD	25713 Courthouse Road	Stony Creek	Sussex	VA	23882	804-478-4723	804-731-8286	100
Mr. Spiers	Douglas	W	Wayne Spiers Farming	25713 Courthouse Road	Stony Creek	Sussex	VA	23882	804-478-4723	434-246-1116	22
Mr. Spiers	Alice	B		21016 Double Branch Road	Stony Creek	Sussex	VA	23882	434-246-3322		180
Mr. Story	Robert	H		21344 Cypress Bridge Road	Newsoms	Southampton	VA	23874	757-654-9479		27
Mr. Story	Louise	W		Post Office Box 4501	Petersburg	Prince George	VA	23803	804-880-1507		20
Mr. Temple	Harace	B		305 Kingsale Road	Holland	Suffolk	VA	23437	757-657-6543		7.85
Mr. Thomas	George	L	Oakland Farms	34577 Merriam Road	Newsoms	Southampton	VA	23874	757-654-6280	757-854-9968	200
Mr. Thomas	John	B	JB Thorne Farms	34134 Statesville Road	Newsoms	Southampton	VA	23874	757-654-0105	757-641-8202	161.7
Mr. Thorne	Matthew	T	JB Thorne Farms	32791 Barnes Church Circle	Newsoms	Southampton	VA	23874	757-654-0165		4.9
Mr. Thorne	Steven	H		5404 Studeley Avenue	Norfolk	Southampton	VA	23808	757-440-0872		13.1
Mr. Truett	Benjamin			4986 Purdy Road	Emporia	Greenville	VA	23847	434-634-4384		6
Mr. Weaver	Henry Lee			8201 Pineridge Road	Suffolk	Suffolk	VA	23437	757-988-4180	757-539-7451	30
Mr. West	Wayland	H		5173 Greenwood Road	Suffolk	Suffolk	VA	23437	757-657-6840	757-630-8149	118.2
Mr. Williams	James (Jr)	R		23298 Greenhead Road	Courland	Southampton	VA	23837	757-653-0852	757-641-9154	12.6
Mr. Williams	James	Robert		23298 Greenhead Road	Courland	Southampton	VA	23837	757-653-0852	757-641-9154	103
Mr. Woodruff, Jr.	John			10578 Brink Road	Emporia	Greenville	VA	23847			14.3
Mr. Woodruff, Jr.	Howard	Carter	ROSEWORRELL	33126 Orion Chapel Road	Boykins	Southampton	VA	23847	757-654-6871	757-371-8283	155.375
Mr. Why	Aubrey	E	Steady Oaks Farm Inc.	3834 Wyatts Mill Road	Jarratt	Greenville	VA	23867	434-634-5286	434-430-1282	104
Mr. Young	Wether	L	Rose Valley Farms	25298 Delaware Road	Courland	Southampton	VA	23837	757-682-6293	757-635-9438	70
			Fox Farms	Post Office Box 178	Boykins	Southampton	VA	23827	757-654-6412		21

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Mr. Lancaster, Sr.	Robert	Henry	Route 2 Box 4620	Hawthorneville	Palaski	GA	31026	478-892-2413		249.2
Mr. Lane	William	J	7642 Lakewood Road	Shattalsboro	Bullock	GA	30461	912-687-5542		38
Mr. Lantry	William		RL 1 Box 31-A	Adrian	Lanier	GA	31002	912-529-4500		38
Mr. Mack	Leah		2407 Mountain-Allentown Road	Monroe	Lanier	GA	31005	478-576-4451		20
Mr. McClure	Jimmy	M	268 Gates Road	Dennin	Worth	GA	31744	228-776-5489		8
Mr. McClure	Ann	G	268 Gates Road	Dennin	Worth	GA	31744	228-776-5489		72.15
Mr. McClure	Jimmy & Ann		268 Gates Road	Dennin	Worth	GA	31744	228-776-5489		628.6
Mr. McClure	Royce		430 Woodcrest Road	Sylvestre	Worth	GA	31731	228-438-9464		415.9
Mr. McDonald	Howard	K	RR 3 Box 402	Adel	Cook	GA	31620	228-886-4292		123
Mr. McDonald	Howard	K	1239 Vinyl Chapel Road	Summer	Worth	GA	21788	228-778-4510		146
Mr. McMurray	Raymond	Levy	768 Crawford Dairy Road	Rochelle	Worth	GA	31079	228-365-2220		50.4
Mr. McMillan	Timothy	E	Route 1, Box 61-C	Elgin	Burman	GA	31748	228-633-7065		158.9
Mr. Medlock	Pat		351 Magnolia Road	Palms	Summer	GA	31760	228-624-4395		158
Mr. Mobley	Winford	S	803 North Rd	Cato	Gandy	GA	39827	228-974-2145		16.8
Mr. Morton	Dermin		1279 Station-Leefield Road	Brooklet	Bullock	GA	30415	912-823-3423		80
Mr. Moss	Marvin		807 N. Hill Street	Fitzgerald	Ber Hill	GA	31730	228-423-6712		90
Mr. Nelson	Sara	J	223 Hill Road	Ashburn	Turner	GA	31714	228-661-4408		100
Mr. Oliver	Clifford	L	864 Newton Road	Camilla	Mitchell	GA	31730	228-338-0254		130
Mr. Orr	Robert	D	RL 1, Box 204	Richard	Stewart	GA	31825	228-887-5465		26
Mr. Paulin	Herbert	Ricky	4213 Hwy 65 West	Uxale	Toombs	GA	30473	912-694-0409		20
Mr. Paulk, Sr.	Kenneth	A	117 Circle Circle	Way	Wain	GA	31708	912-558-5380		57.8
Mr. Peck, Sr.	Waller	E	RL 2 Box 283 Hwy 240	Elanilla	Schley	GA	31608	228-937-2080		24
Mr. Prescott	Waller	E	Post Office Box 585	Wrens	Jefferson	GA	30833	706-547-2753		32
Mr. Prothro	Willie	J	RL 1 Box 343	Richland	Stewart	GA	31825	228-887-2304		175
Mr. Prothro	Willie	J	Box 618 Hwy 37	Adel	Cook	GA	31825	228-887-2304		175
Mr. Purvis	Fred	E	Miss Hay Company	Richland	Stewart	GA	31825	228-887-2304		175
Mr. Raydon	Larry	J	Apex Farms	Adel	Cook	GA	31820	228-886-2857		34
Mr. Regisler	Janice	B	3168 Town & Country Rd	Elanilla	Schley	GA	31806	228-887-5775		228-887-2211
Mr. Scott	William	R	Post Office Box 284	Donnellville	Sevinde	GA	30845	228-524-5086		157.5
Mr. Sendell	Billy		1081 York Road	Newington	Sevinde	GA	30448	912-857-5500		230
Mr. Shuman	May	V	RL 1 Box 385	Sylvestre	Worth	GA	31791	228-776-3428		11.85
Mr. Singletary	May	V	848 Vanders Road	Richville	Tadnell	GA	30453	912-557-4682		10
Mr. Smith	Dan	W	1819 Upper River Road	Palms	Turner	GA	31780	228-824-3281		350.5
Mr. Smith	Lois	T	PO Box 936	Americus	Sturte	GA	31709	228-924-6881		135
Mr. Smith, Jr.	Charles	E	3717 River Road	Needville	Tadnell	GA	30436	912-557-4154		30
Mr. Stanley	Clyde		2825 Chauncy-Dusen Hwy	Waycross	Dodge	GA	30477	478-292-8055		116.8
Mr. Stephens, III	Thomas	E	280 Old Ferry Road	Chenney	Sturte	GA	31011	478-574-4741		72.3
Mr. Stone	Larry	J	557 Vanpelt Co Ln Rd	Cobb	Sturte	GA	31734	228-883-6490		11
Mr. Tard	J	B	2189 Phillipsburg Road	Tifton	Tir	GA	31794	228-382-9315		90
Mr. Thompson	Jim	R	5385 Maddox Road	Dennin	Miller	GA	39841	228-758-2850		7.8
Mr. Tooles, Jr.	Ann		10182 Vines Road	Ochlocknee	Thomas	GA	31773	228-574-5611		185
Mr. Trouman	Stinson	A	Post Office Box 732	Baconton	Mitchell	GA	31716	228-767-5834		17
Mr. Walker, Jr.	Clifford	M	3707 Sadgefield Drive	Waycross	Ben Hill	GA	31750	228-423-8245		15.8
Mr. Weaton	Edward	E	RL #1 box 128	Wrens	Lanier	GA	31605	228-245-7550		24
Mr. Weatherstry, III	Horace	H	6854 Hodges Road	Miller	Jetties	GA	28887	228-788-2820		205
Mr. Williams	Engene		281 S. Boulevard	Cenilla		GA	30442	478-582-4328		27
Mr. Williams	Robert	E	1034 Miller Street Ext.	Statesboro	Bullock	GA	30458	912-764-4239		25
Mr. Williams, Jr.	Albert		Post Office Box 25	Lanier	Sturte	GA	31784	228-874-4475		169.2
			2750 GA Hwy 290	Waycross		GA	31081	478-527-3107		25
						GA				19.2



United States Attorney  
Eastern District of North Carolina

*FAX COVER*

DATE: September 6, 2005

FROM:

**Eric D. Goulian**  
U.S. Attorney's Office  
310 New Bern Ave., Suite 800  
Raleigh, NC 27601  
919-856-4356  
FAX 856-4487

TO:

**Brenna 833-7536**

Total Pages  
(including cover sheet): 11

Peanut litigation: Dan's 7-14-05 letter to me



4:36PM



U. S. Department of Justice

United States Attorney  
Eastern District of North Carolina

Terry Sanford Federal Building  
310 New Bern Avenue  
Suite 800  
Raleigh, North Carolina 27601-1401

Telephone (919) 856-4530  
Criminal FAX (919) 856-4487  
Civil FAX (919) 856-4821  
www.usdoj.gov/usao/nce

September 6, 2005

Fax and First-Class Mail

R. Daniel Boyce  
Boyce & Isley  
P.O. Box 1990  
Raleigh, North Carolina 27602-1990

Re: Peanut Crop Insurance Litigation

Dear Dan:

I am writing in response to your letter of July 14, 2005, concerning farmers on your list who do not appear on RMA's list. Please understand that RMA's list includes only those peanut farmers who (a) have farms within one of the seven federal districts where lawsuits were filed, and (b) were paid an indemnity for a peanut loss in 2002. If someone appears on your list but not on RMA's list, it is because that person's farm is not located in one of the seven federal districts, or because that person did not receive an indemnity for a peanut loss in 2002, or both.

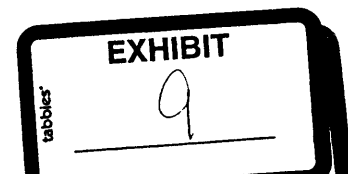
Feel free to give me a call if you have any questions.

Sincerely yours,

FRANK D. WHITNEY  
United States Attorney

A handwritten signature in cursive script, likely belonging to Eric D. Goulian.

Eric D. Goulian  
Assistant United States Attorney



## BOYCE & ISLEY, PLLC

ATTORNEYS AT LAW  
LAWYERS WEEKLY BUILDING, SUITE 100  
POST OFFICE BOX 1990  
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Telephone: (919) 833-7373  
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July 30, 2003

VIA FACSIMILE (202) 514-8625  
AND UNITED STATES MAIL

Ms. Jane W. Vanneman  
Senior Trial Counsel, Commercial Litigation Branch  
Civil Division, Department of Justice  
Attn: Classification Unit, 8<sup>th</sup> Floor  
1100 L Street, N.W.  
Washington, DC 20530

Re: Texas Peanut Farmers, et al. v. The United States  
No. 03-445C (Judge Firestone)

Dear Jane:

We agree with Judge Firestone that it would be best for the Courts and all concerned to have these cases heard all in one place. Also, as Judge Firestone said, the Plaintiffs "need something in our hand" to assure our clients that this case will not be switched back and forth from jurisdiction to jurisdiction and thereby avoid an expeditious decision on the merits of the case and the ultimate issue of liability.

Judge Firestone's suggestion of a joint stipulation on jurisdiction seems to make sense. It may be that we can reach an agreement that any claims under the first filed Complaint are properly before that court and that court has jurisdiction over all the claims. We could further stipulate pursuant to 28 U.S.C. § 1407, assuming we have approval of the other Courts, to transfer all of the cases to one court for hearing on the same issues. Activity in the other cases could be stayed pending resolution of discovery and pretrial motions. The other U.S. Attorneys would likely agree, we believe. If that agreement can be reached, we could then take a dismissal in the Court of Federal Claims. We could have one trial court disposition, one jury trial, if needed, and one appeal to one Circuit Court.

Given both of our summer vacation plans (I also will be out of the office quite extensively during August), we would appreciate your efforts this week in advising us of the Government's position on these matters and advising whether a stipulation can be reached.

Thank you for your prompt attention to this matter, and I look forward to hearing from you.

Sincerely yours,

BOYCE & ISLEY, PLLC

*Dan Boyce (aj)*

R. Daniel Boyce

EXHIBIT

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RDB:hh

CORRECTED BRIEF FOR DEFENDANT-APPELLEE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

04-5067

TEXAS PEANUT FARMERS, GEORGIA PEANUT FARMERS, ALABAMA PEANUT  
FARMERS, SOUTH CAROLINA PEANUT FARMERS, and FLORIDA PEANUT  
FARMERS,

Plaintiff-Appellants,

v.

THE UNITED STATES,

Defendant-Appellee.

APPEAL FROM THE UNITED STATES COURT OF FEDERAL CLAIMS  
NO. 03-445, Judge Nancy B. Firestone

PETER D. KEISLER  
Assistant Attorney General

DAVID M. COHEN  
Director

JANE W. VANNEMAN  
Senior Trial Counsel  
Commercial Litigation Branch  
Department of Justice  
Attn: Classification Unit  
8th Floor,  
1100 L Street, N.W.  
Washington, D.C. 20530  
Tele: (202) 307-1011  
Fax: (202) 514-8624

July 21, 2004

EXHIBIT

Attorneys for Defendant-Appellee

C. The Plaintiffs Named In The Court of  
Federal Claims Are Also Named In  
Suits Pending In Five District Courts

As we explained to the court, all of the plaintiffs named in the Complaint filed in the court were also specifically named in five district court complaints that appellants' counsel filed in Texas, South Carolina, Florida, Alabama, and Georgia, after the filing in the Court of Federal Claims. A149-226.<sup>13</sup> Because the individually-named appellants are now named in a district court (although not necessarily in the district in which the farm is located), the court properly denied the motion to transfer.

D. It Is Not Practical To Transfer Appellants' Cases  
Because The Court Would Be Required To Transfer  
To The Districts In Which The Farms Are Located

The court recognized that it would not be practical to transfer the cases to the various districts in which the farms are located. Counsel for the farmers provided no information upon which to base a transfer to any particular district court in the five states.

Appellants contend that, for each named plaintiff, the counties with respect to the farms at issue were identified in the complaint. However, there are dozens of counties

---

<sup>13</sup> Because the district court suits in the five states were filed in May 2003, after the February 2003 filing in the Court of Federal Claims, 28 U.S.C. §1500 does not apply. See generally Loveladies Harbor v. United States, 27 F.3d 1545 (Fed. Cir. 1994). See Part F3, below.

potentially involved, and fourteen possible districts within the five states (four districts in Texas; three districts each in Florida, Georgia, and Alabama; and one district in South Carolina, for a total of fourteen possible districts).

Appellants failed to identify, for each of the named plaintiffs, by counties, the fourteen districts, within the five states, in which the farms were located. See 28 U.S.C. Chapter 5: §81 (Alabama), §89 (Florida), §90 (Georgia), §121 (South Carolina), §124 (Texas). A96-99.

Thus, it was not practical for the court to attempt to issue transfer orders to any one of the multiple district courts. See Part E.

E. It Is Too Late To Transfer The Case For The Named Plaintiffs Because Appellants Failed To Provide This Court With Information Sufficient To Transfer The Claims

Appellants failed to provide any information to the court as to the district in which the farms are located. Appellants fail to provide, on appeal, any information to this Court that might assist it in any possible transfer order. The burden that appellants sought to impose upon both courts - to match the dozens of named plaintiffs, with the counties in which the farms are located, with the appropriate district court, within one of five states - is too great to warrant any consideration of the transfer motion. In any event, appellants failed to file any motion to transfer in this court. Rule 27.

It would clearly be a burden for this Court, or for the



**PLAINTIFF'S PROPOSED  
EFFICIENT PROCESS**

1. Class Counsel filed Motion before JPML Panel that Court of Federal Claims case be identified as "potential tag along action" (Court of Federal Claims merely confirms status and requests ruling)
2. JPML issues "tag along action" transfer order of the Court of Federal Claims case (in its entirety) to EDNC pursuant to JPML Rule 7.4 and sends one file pursuant to JPML Rule 1.6
3. EDNC completes all coordinated/consolidated pretrial proceedings including determination of jurisdiction & venue issues of individual plaintiff cases and issues transfer orders of all plaintiff cases to the appropriate federal district courts pursuant to 28 USC 1631; 28 USC 1406; 28 USC 1407 and 28 USC 1404.
4. 24 federal district courts receive identical transfer orders; enter final judgment and begin 24 identical class administrations unless Government agrees to consolidate as one class administration.

**GOVERNMENT'S PROPOSAL AND  
RESULTING ADDITIONAL STEPS  
TO REACH SAME END RESULT ?**

1. ~~Court of Federal Claims~~ transfers "some" cases to EDNC which requires determination of which cases go to EDNC and which cases may go elsewhere.
2. ~~Court of Federal Claims~~ requires "plaintiffs' counsel to identify those plaintiffs named in this action whose farms are not located in the specific judicial districts in the five states in which the cases were filed so that the Court of Federal Claims may transfer the cases for those named plaintiffs to the appropriate judicial districts in the district courts in the five states in which the farms are located."
3. Plaintiffs file Motion to Compel production of information including Governments' withheld information regarding the location of specific plaintiffs' farms to determine which districts are the appropriate federal districts for new lawsuits.
4. Government either provides or does not provide the information needed to determine the appropriate federal districts for each of Plaintiffs' claims.
5. ~~Court of Federal Claims~~ sorts out disputes as to which new federal district courts must be identified and sends as many as 14 separate transfer orders to 14 new separate federal district courts.
6. As many as 14 new federal cases are initiated in 14 new federal district courts
7. Plaintiffs file as many as 14 motions to transfer the cases in 14 new and different federal district courts requesting that the cases be designated "tag along actions" to be handled by JPML.

**EXHIBIT**

tabbies

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8. Plaintiffs identify 14 new "tag along actions" and request JPML to certify 14 new cases as "tag along actions."
9. JPML certifies each of the 14 new federal cases as "tag along" cases and transfers them to the EDNC pursuant to rule 7.4. This also requires the transfer of 14 new files pursuant to JPML Rule 1.6.
10. After waiting for all these cases to reach it for \_\_?\_\_ months, EDNC accepts and enters into system as many as 14 new tag along cases for pretrial determination. (meanwhile other cases either disposed of or waiting for the 14 new cases to reach EDNC).
11. EDNC completes all coordinated/consolidated pretrial proceedings including determination of jurisdiction & venue issues of individual plaintiff cases and issues transfer orders of all plaintiff cases to the appropriate federal district courts pursuant to 28 USC 1631; 28 USC 1406; 28USC 1407 and 28 USC 1404.
12. 24 federal district courts receive identical transfer orders; enter final judgment and begin 24 identical class administrations unless Government agrees to consolidate as one class administration.